

3-16-2011

State v. Morgan Clerk's Record Dckt. 38305

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

PHILLIP JAMES MORGAN,

Defendant-Appellant.

Supreme Court Case No. 38305

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE RICHARD D. GREENWOOD

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

State of Idaho vs. Phillip James Morgan

Date	Code	User		Judge
3/30/2010	NCRF	PRNYEJED	New Case Filed - Felony	Magistrate Court Clerk
	PROS	PRNYEJED	Prosecutor assigned Shawna Dunn	Magistrate Court Clerk
	HRSC	TCMCCOSL	Hearing Scheduled (Video Arraignment 03/30/2010 01:30 PM)	Kevin Swain
	ARRN	TCEMERYV	Hearing result for Video Arraignment held on 03/30/2010 01:30 PM: Arraignment / First Appearance	Kevin Swain
	CHGA	TCEMERYV	Judge Change: Adminisitrative	Cawthon / Irby
	ORPD	TCEMERYV	Order Appointing Public Defender Ada County Public Defender	Cawthon / Irby
	HRSC	TCEMERYV	Hearing Scheduled (Preliminary 04/13/2010 08:30 AM)	Cawthon / Irby
	BSET	TCEMERYV	BOND SET: at 25000.00 - (I18-8004 {F} Driving Under the Influence)	Cawthon / Irby
	ORDR	TCEMERYV	Order: Pre-Trial Release Order Scram Device No Alcohol No Driving	Kevin Swain
	ORPD	MADEF RJM	Order Appointing Public Defender	Cawthon / Irby
	ORPD	MADEF RJM	Order Appointing Public Defender	Cawthon / Irby
4/1/2010	NOPE	TCFARANM	Notification of Penalties for Escape	Cawthon / Irby
4/8/2010	STIP	TCPETEJS	Stipulation for Substitution of Counsel/Stewart	Cawthon / Irby
4/13/2010	PHWV	CCMANLHR	Hearing result for Preliminary held on 04/13/2010 08:30 AM: Preliminary Hearing Waived (bound Over)	Cawthon / Irby
	HRSC	CCMANLHR	Hearing Scheduled (Arraignment 04/20/2010 09:00 AM)	Cathleen Macgregor-Irby
	COMT	CCMANLHR	Commitment	Cathleen Macgregor-Irby
	MOTN	CCMANLHR	Motion for Bond Reduction Denied	Cathleen Macgregor-Irby
4/15/2010	PROS	PRBRIGCA	Prosecutor assigned Shelley W Armstrong	Richard D. Greenwood
	INFO	TCMCCOSL	Information	Richard D. Greenwood
4/20/2010	DCHH	TCJOHNKA	Hearing result for Arraignment held on 04/20/2010 09:00 AM: District Court Hearing Held Court Reporter: Leslie Anderson Number of Transcript Pages for this hearing estimated: less than 50 pages	Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Pretrial Conference 07/06/2010 01:30 PM)	Richard D. Greenwood
	PLEA	TCJOHNKA	A Plea is entered for charge: - NG (I18-8004 {F} Driving Under the Influence)	Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Jury Trial 07/14/2010 09:00 AM)	Richard D. Greenwood
4/28/2010	ORDR	TCJOHNKA	Scheduling Order	Richard D. Greenwood

000002

State of Idaho vs. Phillip James Morgan

Date	Code	User	Judge
5/10/2010	MOTN	TCRAMISA	Motion to Suppress and Memorandum in Support Thereof Richard D. Greenwood
5/27/2010	MOTN	TCRAMISA	Motion to Reset JT Richard D. Greenwood
	MISC	TCRAMISA	State's Response to Defendant's Motion to Suppress Richard D. Greenwood
	NOHG	TCRAMISA	Notice Of Hearing Richard D. Greenwood
5/28/2010	HRSC	TCRAMISA	Hearing Scheduled (Hearing Scheduled 06/15/2010 10:00 AM) Suppress and Continue to JT Richard D. Greenwood
6/15/2010	DCHH	TCJOHNKA	Hearing result for Hearing Scheduled held on 06/15/2010 10:00 AM: District Court Hearing Held Court Reporter: Leslie Anderson Number of Transcript Pages for this hearing estimated: less than 100 pages Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Pretrial Conference 07/06/2010 01:30 AM) Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Jury Trial 07/28/2010 09:00 AM) Richard D. Greenwood
	HRVC	TCJOHNKA	Hearing result for Jury Trial held on 07/14/2010 09:00 AM: Hearing Vacated Richard D. Greenwood
6/24/2010	RSDD	TCPETEJS	State/City Response to Discovery Richard D. Greenwood
	RQDS	TCPETEJS	State/City Request for Discovery Richard D. Greenwood
	ORDR	TCJOHNKA	Memorandum and Order Concerning Pre-Trial Motions Richard D. Greenwood
7/6/2010	BNDS	TCWADAMC	Bond Posted - Surety (Amount 25000.00) Richard D. Greenwood
	RSDD	TCRAMISA	Defendant's Response to Discovery Richard D. Greenwood
	RSDD	TCRAMISA	Defendant's Response to Discovery Richard D. Greenwood
	DCHH	TCJOHNKA	Hearing result for Pretrial Conference held on 07/06/2010 01:30 PM: District Court Hearing Held Court Reporter: Beverly Benjamin Number of Transcript Pages for this hearing estimated: less than 50 pages Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Pretrial Conference 09/14/2010 01:30 PM) Richard D. Greenwood
	HRSC	TCJOHNKA	Hearing Scheduled (Jury Trial 09/29/2010 09:00 AM) Richard D. Greenwood
	HRVC	TCJOHNKA	Hearing result for Jury Trial held on 07/28/2010 09:00 AM: Hearing Vacated 2 days Richard D. Greenwood
7/7/2010	JRYI	TCJOHNKA	Defendant's Proposed Jury Instructions Richard D. Greenwood
7/8/2010	ORDR	TCJOHNKA	Scheduling Order Richard D. Greenwood
7/9/2010	ORDR	TCJOHNKA	Proposed Order Re: Condition of Release Richard D. Greenwood
9/14/2010	DCHH	TCJOHNKA	Hearing result for Pretrial Conference held on 09/14/2010 01:30 PM: District Court Hearing Held Court Reporter: Leslie Anderson Number of Transcript Pages for this hearing estimated: less than 50 pages Richard D. Greenwood

000003

State of Idaho vs. Phillip James Morgan

Date	Code	User		Judge
9/28/2010	RSDS	TCPETEJS	State/City Response to Discovery/Addendum	Richard D. Greenwood
9/29/2010	JTST	DCELLISJ	Hearing result for Jury Trial held on 09/29/2010 09:00 AM: Jury Trial Started 2 days COURT REPORTER DIANNE CROMWELL LESS THAN 300 pages	Roderick "Barry" Wood
	HRSC	DCELLISJ	Hearing Scheduled (Hearing Scheduled 09/30/2010 09:00 AM) Day two jury trial	Roderick "Barry" Wood
9/30/2010	DCHH	DCELLISJ	Hearing result for Hearing Scheduled held on 09/30/2010 09:00 AM: District Court Hearing Held Court Reporter: DIANNE CROMWELL Number of Transcript Pages for this hearing estimated: Day two jury trial LESS THAN 300 pages	Roderick "Barry" Wood
	HRSC	DCELLISJ	Hearing Scheduled (Sentencing 11/16/2010 02:30 PM)	Richard D. Greenwood
	FIGT	DCELLISJ	Finding of Guilty (I18-8004 {F} Driving Under the Influence)	Richard D. Greenwood
	ORDR	DCTYLENI	Order Granting Furlough (10/1/10)	Richard D. Greenwood
	VERD	DCELLISJ	Verdict Form Filed	Roderick "Barry" Wood
	JUIN	DCELLISJ	Jury Instructions Filed	Roderick "Barry" Wood
	PSSA1	DCELLISJ	Order for Presentence Investigation Report and Substance Abuse Assessment	Richard D. Greenwood
	JAIL	TCJOHNKA	Sentenced to Jail or Detention (I18-8004 {F} Driving Under the Influence) Confinement terms: Credited time: 158 days. Penitentiary determinate: 2 years. Penitentiary indeterminate: 6 years.	Richard D. Greenwood
11/16/2010	DCHH	TCJOHNKA	Hearing result for Sentencing held on 11/16/2010 02:30 PM: District Court Hearing Held Court Reporter: Susan Gambee Number of Transcript Pages for this hearing estimated: less than 50 pages	Richard D. Greenwood
11/17/2010	BNDE	DCLYKEMA	Surety Bond Exonerated (Amount 25,000.00)	Richard D. Greenwood
	NOTC	TCBROXLV	Notice of Appointment of PD and Withdraw of Private Counsel	Richard D. Greenwood
11/18/2010	RJCAPP	DCLYKEMA	Judgment of Conviction and Order Retaining Jurisdiction (Correctional Alternative Placement Program (CAPP))	Richard D. Greenwood
	ORDR	TCJOHNKA	Order Re: Public Defender	Richard D. Greenwood
	ORPD	TCJOHNKA	Defendant: Morgan, Phillip James Order Appointing Public Defender Court appointed Ada County Public Defender	Richard D. Greenwood
11/23/2010	MFBR	TCRAMISA	Motion For Bond Reduction	Richard D. Greenwood
	RQDD	TCRAMISA	Defendant's Request for Discovery	Richard D. Greenwood
11/24/2010	APSC	TCRAMISA	Appealed To The Supreme Court	Richard D. Greenwood
11/26/2010	STAT	CCTOMPMA	STATUS CHANGED (batch process)	000004

Date: 3/16/2011

Fourth Judicial District Court - Ada County

User: CCTHIEBJ

Time: 02:12 PM

ROA Report

Page 4 of 4

Case: CR-FE-2010-0005111 Current Judge: Richard D. Greenwood

Defendant: Morgan, Phillip James

State of Idaho vs. Phillip James Morgan

Date	Code	User	Judge
11/29/2010	ORDR	TCJOHNKA	Order Appointing State Appellate Public Defender on Direct Appeal Richard D. Greenwood

000005

DR # 10-006058

NO. _____
FILED 12:12
J.M. PM
MAR 30 2010
J. DAVID NAVAFFRO, Clerk
By S. McGonnack
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

James E Vogt
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP JAMES MORGAN,

Defendant.

Case No. CR-FE-2010-000 5111

COMPLAINT

Morgan's DOB: [REDACTED]

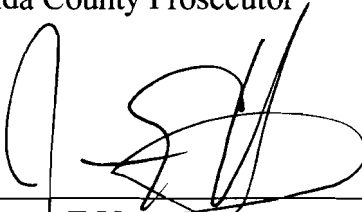
Morgan's SSN: [REDACTED]

PERSONALLY APPEARED Before me this 30 day of March 2010, James E Vogt, Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, who, being first duly sworn, complains and says: that PHILLIP JAMES MORGAN, on or about the 12th day of March, 2010, in the County of Ada, State of Idaho, did commit the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL (TWO OR MORE WITHIN TEN YEARS), FELONY, I.C. §18-8004, 8005(6) as follows:

That the Defendant, PHILLIP JAMES MORGAN, on or about the 12th day of March, 2010, in the County of Ada, State of Idaho, did drive a motor vehicle, to-wit: a maroon 2002 Chevrolet Blazer, on or near the intersection of Taft Street and Sycamore Drive, while under the influence of alcohol and/or an intoxicating substance, while having pled guilty to or having been found guilty of at least two violations of I.C. §18-8004 within the previous ten years.

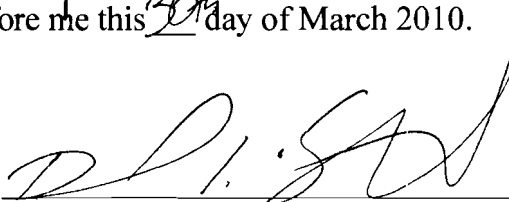
All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.

GREG H. BOWER
Ada County Prosecutor



James E. Vogt
Deputy Prosecuting Attorney

SUBSCRIBED AND Sworn to before me this 20th day of March 2010.



Magistrate

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

STATE OF IDAHO, ADA COUNTY, MAGISTRATE DIVISION

PROBABLE CAUSE FORM

STATE OF IDAHO

vs.

Phillip James Morgan

PROSECUTOR J. Vogt

COMPLAINING WITNESS _____

CASE NO. FE 70-511

CLERK H. MANLEY

DATE 3/30/2010 TIME 1158

TOXIMETER _____

CASE ID. Steckel 033010 BEG. 115812

END 115903

JUDGE

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> BEREZ | <input type="checkbox"/> MacGREGOR-IRBY |
| <input type="checkbox"/> BIETER | <input type="checkbox"/> MANWEILER |
| <input type="checkbox"/> CAWTHON | <input type="checkbox"/> McDANIEL |
| <input type="checkbox"/> COMSTOCK | <input type="checkbox"/> MINDER |
| <input type="checkbox"/> DAY | <input type="checkbox"/> OTHS |
| <input type="checkbox"/> GARDUNIA | <input type="checkbox"/> REARDON |
| <input type="checkbox"/> HARRIGFELD | <input checked="" type="checkbox"/> STECKEL |
| <input type="checkbox"/> HAWLEY | <input type="checkbox"/> SWAIN |
| <input type="checkbox"/> HICKS | <input type="checkbox"/> WATKINS |
| <input type="checkbox"/> _____ | |
| <input type="checkbox"/> _____ | |

STATUS

- ☒ STATE SWORN
- ☒ PC FOUND Judicial Notices
- ☒ COMPLAINT SIGNED
- ☐ AMENDED COMPLAINT SIGNED
- ☐ AFFIDAVIT SIGNED
- ☐ NO PC FOUND _____
- ☐ EXONERATE BOND
- ☐ SUMMONS TO BE ISSUED
- ☐ WARRANT ISSUED
- ☐ BOND SET \$ _____
- ☐ NO CONTACT

D.R. # _____

COMMENTS

- ☐ DISMISS CASE
- ☒ IN CUSTODY

() AGENT'S WARRANT

() RULE 5(b)

() FUGITIVE

- Resile -

ADA COUNTY MAGISTRATE MINUTES

Phillip James Morgan CR-FE-2010-0005111

DOB: [REDACTED]

Scheduled Event: Video Arraignment Tuesday, March 30, 2010 01:30 PM

Judge: Kevin Swain

Clerk: [Signature] Interpreter: [Signature]

Prosecuting Agency: AC BC GC MC

Pros: [Signature]

PD / Attorney: [Signature]

• 1118-8004 F Driving Under the Influence F

145637 Case Called Defendant: Present Not Present In Custody

Advised of Rights Waived Rights PD Appointed Waived Attorney

Guilty Plea / PV Admit N/G Plea Advise Subsequent Penalty

Bond \$5,000 ROR Pay / Stay Payment Agreement

In Chambers PT Memo Written Guilty Plea No Contact Order

Advises def Charge
[Signature] RB

PIH 4/13/2010 @ 8:30

Scram - no Alcohol
no Driving

Finish () Release Defendant

Boyle

NO. _____
A.M. _____ FILED P.M. 3:57

MAR 30 2010

By J. DAVID NAVARRO, Clerk
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

THE STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP JAMES MORGAN,

Defendant.

Case No. CR-FE-2010-0005111

PRE-TRIAL RELEASE

ORDER

The above mentioned Defendant has been ordered as a condition of bond to the following:

- ☒ SCRAM Alcohol Monitor
- ☒ No alcohol
 - ☒ No tampering with the device
 - ☒ Defendant must pay the monitoring fees (\$12/day + \$35 one time install fee)
 - ☒ Defendant shall not drive any motor vehicle.

☐ SCRAM Alcohol Monitoring with House Arrest

Conditions: _____

☐ GPS Monitoring

☐ Probation Office

☐ Sheriff's Office

Conditions: _____

☐ Other Conditions: _____

Any violations of this order may result in a bond revocation and return to custody.

Defendant's Signature

Date

Magistrate

Date

000010

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
MAGISTRATE DIVISION

NO. 913 FILED PM
AM

APR 01 2010

STATE OF IDAHO,
Plaintiff.

vs.

Phillip James Morgan
5106 Wolfe
Boise, ID 83705

Defendant.

J. DAVID NAVARRO, Clerk
By NATALIE FARACA
DEPUTY

Case No: CR-FE-2010-0005111

**NOTICE OF APPOINTMENT OF PUBLIC DEFENDER
AND SETTING CASE FOR HEARING**

☒ Ada ☐ Boise ☐ Garden City ☐ Meridian

TO: Ada County Public Defender

YOU ARE HEREBY NOTIFIED that you are appointed to represent the defendant in this cause, or in the District Court until relieved by court order. The case is continued for:

Preliminary Judge: Tuesday, April 13, 2010 08:30 AM
Cawthon / Irby

BOND AMOUNT: _____ The Defendant is: ☐ In Custody ☐ Released on Bail ☐ ROR

TO: The above named defendant

IT HAS BEEN ORDERED BY THIS COURT that the defendant is to contact the Ada County Public Defender's Office at 200 W. Front Street, Room 1107, Boise, Idaho 83702. Telephone: (208) 287-7400. If the defendant is unable to post bond and obtain his/her release from jail, that the proper authorities allow the defendant to make a phone call to the Ada County Public Defender.

IT HAS BEEN FURTHER ORDERED: That the parties, prior to the pre-trial conference, complete and comply with Rule 16 I.C.R. and THAT THE DEFENDANT BE **PERSONALLY PRESENT** AT BOTH THE PRE-TRIAL CONFERENCE AND / OR THE JURY TRIAL: FAILURE TO APPEAR AT EITHER THE PRE-TRIAL CONFERENCE OR THE JURY TRIAL WILL RESULT IN A **BENCH WARRANT** FOR THE DEFENDANT'S **ARREST**.

Dated : 3/30/2010

Deputy Clerk

I hereby certify that copies of this Notice were served as follows on this date Tuesday, March 30, 2010.

Defendant: Mailed _____ Hand Delivered ☒ Signature _____
Clerk / date _____ Phone () _____

Prosecutor: Interdepartmental Mail ☒

Public Defender: Interdepartmental Mail ☒

Deputy Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
STATE OF IDAHO, ADA COUNTY

FILED	4/1/10	AT	9:30	M.
J. DAVID NAVARRO, CLERK OF THE DISTRICT COURT				
BY	<i>man</i>			
Deputy				

STATE OF IDAHO,

Plaintiff,

vs.

Phillip Morgan

Defendant

SSN: XXX-XX-

CASE NO. FE-10-5111

NOTIFICATION OF CONSEQUENCES AND
PENALTIES FOR ESCAPE PURSUANT TO
I.C. §§ 18-2505, 2506

TO: THE ABOVE-NAMED DEFENDANT, YOU ARE HEREBY NOTIFIED AS FOLLOWS:

I.C. § 18-2505 (1) Every prisoner charged with, convicted of, or on probation for a **felony** who is confined in any correctional facility, as defined in section 18-101A, Idaho Code, including any private correctional facility, or who while outside the walls of such correctional facility in the proper custody of any officer or person, or while in any factory, farm or other place without the walls of such correctional facility, who escapes or attempts to escape from such officer or person, or from such correctional facility, or from such factory, farm or other place without the walls of such correctional facility, shall be guilty of a **felony**, and upon conviction thereof, any such second term of imprisonment shall commence at the time he would otherwise have been discharged. **A felony is punishable by fine not exceeding fifty thousand dollars (\$50,000.00) or imprisonment in the state prison not to exceed five (5) years or both.**

I.C. § 18-2506 (1)(a) Every prisoner charged with or convicted of a **misdemeanor** who is confined in any county jail or other place or who is engaged in any county work outside of such jail or other place, or who is in the lawful custody of any officer or person, who escapes or attempts to escape therefrom, is guilty of a **misdemeanor**. **A misdemeanor is punishable by fine not exceeding \$1000.00 or by imprisonment in the county jail not to exceed one (1) year or both.**

(b) In cases involving escape or attempted escape by use of threat, intimidation, force, violence, injury to person or property other than that of the prisoner, or wherein the escape or attempted escape was perpetrated by use or possession of any weapon, tool, instrument or other substance, the prisoner shall be guilty of a **felony**.

Escape shall be deemed to include abandonment of a job site or work assignment without the permission of an employment supervisor or officer. Escape includes the intentional act of leaving the area of restriction set forth in a court order admitting a person to bail or release on a person's own recognizance with electronic or global positioning system tracking, monitoring and detention or the area of restriction set forth in a sentencing order, except for leaving the area of restriction for the purpose of obtaining emergency medical care.

I ACKNOWLEDGE RECEIPT OF THIS WRITTEN NOTICE.

Defendant:

Phillip Morgan

Dated:

3-30-10

000012

Revised 06/2009

NO. 9 FILED
A.M. P.M.

APR 08 2010

J. L. AND NAVATI
By JANA L. NAVATI
002087

DAVID STEWART LAW
DAVID A. STEWART
Attorney at Law
PO Box 9462
Boise, Idaho 83707
Tel. (208) 850-5928
Fax. (208) 473-2960
E-mail: davids@davidastewartlaw.com
ISB # 7932

IN THE FOURTH JUDICIAL DISTRICT COURT
ADA COUNTY, STATE OF IDAHO

STATE OF IDAHO,
Plaintiff,

-vs-

PHILLIP JAMES MORGAN,
Defendant.


Case No. CR-FE-2010-0005111

STIPULATION FOR
SUBSTITUTION OF COUNSEL

COMES NOW the Ada County Public Defender's Office and David A. Stewart, and hereby agree and stipulate that David A. Stewart will substitute for the Ada County Public Defender's Office as attorney of record for the above-named Defendant in the above-listed case.

DATED this 6th day of April, 2010.


PUBLIC DEFENDER


DAVID A. STEWART
Substituted Attorney

STIPULATION FOR SUBSTITUTION
OF COUNSEL - 1

Apr 05 10:11:04a

p.2


CERTIFICATE OF SERVICE

I hereby certify that on 7th day of April, 2010, I served a true and correct copy of the foregoing STIPULATION FOR SUBSTITUTION OF COUNSEL upon the individual(s) or agency(ies) named below in the manner noted:

Hand Delivered:

**ADA COUNTY PUBLIC DEFENDER'S OFFICE
200 W FRONT ST RM 1107
BOISE ID 83702**

**ADA COUNTY PROSECUTING ATTORNEY'S OFFICE
200 W FRONT ST RM 3191
BOISE ID 83702**



DAVID A. STEWART

**STIPULATION FOR SUBSTUTION
OF COUNSEL - 2**

000014

ADA COUNTY MAGISTRATE MINUTES

Phillip James Morgan CR-FE-2010-0005111

DOB: [REDACTED]

Scheduled Event: **Preliminary** Tuesday, April 13, 2010 08:30 AM

Judge: **Cawthon / Irby** Clerk: **H. MANLEY** Interpreter: _____

Prosecuting Agency: AC BC _____ GC _____ MC _____ Pros: Shawna Dunn

PD / Attorney: David Stewart

• 1 I18-8004 F Driving Under the Influence F

93406 Case Called Defendant: ☒ Present _____ Not Present ☒ In Custody

_____ Advised of Rights _____ Waived Rights _____ PD Appointed _____ Waived Attorney

_____ Guilty Plea / PV Admit _____ N/G Plea _____ Advise Subsequent Penalty

_____ Bond \$ _____ ROR _____ Pay / Stay _____ Payment Agreement

_____ In Chambers 25,000 + scem _____ PT Memo _____ Written Guilty Plea _____ No Contact Order

D Waives phrg
B/o Greenwood
4/20/10 @ 9:00am
Comm Signed

Motion for bond Reduction Denied, Bond remains as set
94022

Finish () Release Defendant

000015

FILED 4-13-10 AT 9:40 A.M.
J. DAVID NAVARRO,
CLERK OF THE DISTRICT COURT
BY AMerly
Deputy

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs. Phillip James Morgan

Defendant.

CASE NO. FE 10- 511

NOTICE OF:

☒ Ada ☐ Boise ☐ GC ☐ Meridian

☐ FURTHER PROCEEDINGS

BEFORE JUDGE _____

☐ TRIAL SET COURT/JURY

BEFORE JUDGE _____

☐ PRELIMINARY HEARING RESET

BEFORE JUDGE _____

☒ DISTRICT COURT ARRAIGNMENT

BEFORE JUDGE Greenwood

NOTICE IS HEREBY GIVEN to the above-named Defendant that proceedings in this case have been continued until 9:00 o'clock a.m. on 4-20-10, in the courtroom at the

ADA COUNTY COURTHOUSE, 200 W. FRONT STREET, BOISE, ID 83702

You must appear as scheduled above. Failure to do so will result in a warrant being issued for your arrest.

J. DAVID NAVARRO, Clerk

DATED 4-13-10

By: AMerly
Deputy Clerk

I hereby certify that copies of this Notice were served as follows:

Defendant:
Hand Delivered ☒ Mailed ☐
Clerk A Date _____

Signature AMerly
Address _____

Defense Attorney:
Hand Delivered ☒ Mailed ☐
Clerk A Date _____

David Stewart

Prosecutor ☒ - Interdepartmental Mail
Public Defender - Interdepartmental Mail

Clerk _____ Date _____
Clerk _____ Date _____

000016

APR 13 2010

J. DAVID NAVARRO, Clerk
By H. MANLEY
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Shawna Dunn

Deputy Prosecuting Attorney

200 W. Front Street, Room 3191

Boise, Idaho 83702

Phone: 287-7700

Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP JAMES MORGAN,

Defendant.

Case No. CR-FE-2010-0004278

COMMITMENT

Defendant's DOB: [REDACTED]

Defendant's SSN: [REDACTED]

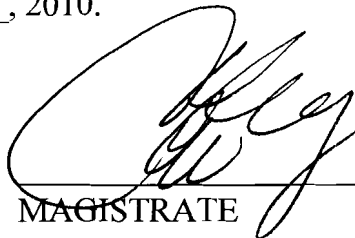
THE ABOVE NAMED DEFENDANT, PHILLIP JAMES MORGAN, having been brought before this Court for a Preliminary Examination on the 13 day of April, 2010, on a charge that the Defendant on or about the 12th day of March, 2010, in the County of Ada, State of Idaho, did commit the crime of: OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL (TWO OR MORE WITHIN TEN YEARS), FELONY, I.C. §18-8004, 8005(6) as follows:

That the Defendant, PHILLIP JAMES MORGAN, on or about the 12th day of March, 2010, in the County of Ada, State of Idaho, did drive a motor vehicle, to-wit: a maroon 2002 Chevrolet Blazer, on or near the intersection of Taft Street and Sycamore Drive, while under the influence of alcohol and/or an intoxicating substance, while having pled guilty to or having been found guilty of at least two violations of I.C. §18-8004 within the previous ten years .

The Defendant having so appeared and having had/having waived preliminary examination, the Court sitting as a Committing Magistrate finds that the offense charged as set forth has been committed in Ada County, Idaho, and that there is sufficient cause to believe that the Defendant is guilty of committing the offense as charged.

WHEREFORE, IT IS ORDERED that the Defendant be held to answer to the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, to the charge herein set forth. Bail is set in the sum of \$ 25,000.00.

DATED this 13 day of April, 2010.



MAGISTRATE

APR 15 2010

J. DAVID NAVARRO, Clerk
By ERIN BULCHER
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Phone: 287-7700
Fax: 287-7709

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2010-000 ⁵¹¹¹ 4278-
)	
vs.	)	I N F O R M A T I O N
)	
PHILLIP JAMES MORGAN,	)	Defendant's DOB [REDACTED]
	)	Defendant's SSN: [REDACTED] ROL
Defendant.)	
_____)	

GREG H. BOWER, Prosecuting Attorney, in and for the County of Ada, State of Idaho, who in the name and by the authority of the State, prosecutes in its behalf, comes now into District Court of the County of Ada, and states that PHILLIP JAMES MORGAN is accused by this Information of the crime of: OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL (TWO OR MORE WITHIN TEN YEARS), FELONY, I.C. §18-8004, 8005(6) which crime was committed as follows:

That the Defendant, PHILLIP JAMES MORGAN, on or about the 12th day of March, 2010, in the County of Ada, State of Idaho, did drive a motor vehicle, to-wit: a

maroon 2002 Chevrolet Blazer, on or near the intersection of Taft Street and Sycamore Drive, while under the influence of alcohol and/or an intoxicating substance, while having pled guilty to or having been found guilty of at least two violations of I.C. §18-8004 within the previous ten years .

All of which is contrary to the form, force and effect of the statute in such case and against the peace and dignity of the State of Idaho.



GREG H. BOWER
Ada County Prosecuting Attorney

Session: Greenwood042010
Session Date: 2010/04/20
Judge: Greenwood, Richard
Reporter: Anderson, Leslie

Division: DC
Session Time: 08:16

Courtroom: CR504

Clerk(s):
Johnson, Kathy

State Attorney(s):
Armstrong, Shelley
Medema, Jonathan

Public Defender(s):
Simmons, Kimberly
Cahill, August
Rolfson, Eric

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: CRFE10.5111
Plaintiff:
Plaintiff Attorney:
Defendant: Morgan, Phillip
Co-Defendant(s):
Pers. Attorney: Stewart, David
State Attorney: Armstrong, Shelley
Public Defender:

2010/04/20

09:01:27 - Operator
Recording:
09:01:27 - New case
Morgan, Phillip
09:02:00 - Judge: Greenwood, Richard
The Crt calls the case debt present in custody with counsel.
09:02:33 - Judge: Greenwood, Richard
The Crt advises the debt of his arraignment rights.
09:06:48 - Defendant: Morgan, Phillip
Waives the formal reading.
09:06:58 - Judge: Greenwood, Richard
The Crt advises the debt of the charges filed against him and the possible
09:07:22 - Judge: Greenwood, Richard
penalties.
09:08:28 - Pers. Attorney: Stewart, David
Statement regarding the correction of the Information.
09:08:51 - Judge: Greenwood, Richard
The Crt makes the appropriate changes to the Information.
09:09:02 - Pers. Attorney: Stewart, David
The debt will be pleading not guilty.

000021

09:09:54 - Plaintiff Attorney:
09:09:55 - Judge: Greenwood, Richard
The Crt set this matter for JT July 14, 2010 at 9:00 am for 2 days and PT
09:10:15 - Judge: Greenwood, Richard
July 6, 2010 at 1:30 pm.
09:10:21 - Pers. Attorney: Stewart, David
Statement regarding the care that he is receiving at the jail.
09:11:41 - Pers. Attorney: Stewart, David
Requests that he be released so that he can receive the medical care that is
09:12:05 - Pers. Attorney: Stewart, David
needed.
09:12:08 - Judge: Greenwood, Richard
Statement regarding the bond.
09:12:16 - Plaintiff Attorney:
09:12:18 - State Attorney: Armstrong, Shelley
Bond is set at \$25,000.00 - argument regarding the deft's release. Not
09:12:52 - State Attorney: Armstrong, Shelley
opposed to a furlough so that the deft will not have access to car keys.
09:13:27 - Judge: Greenwood, Richard
The Crt addresses counsel.
09:13:41 - Plaintiff Attorney:
09:13:42 - State Attorney: Armstrong, Shelley
Statement regarding the Crt's statements.
09:13:53 - Judge: Greenwood, Richard
The Crt addresses the deft and his counsel regarding the care that he is
09:14:16 - Judge: Greenwood, Richard
receiving at the jail.
09:15:15 - Judge: Greenwood, Richard
The Crt will not release the deft ROR today.
09:16:02 - Judge: Greenwood, Richard
The Crt advises that the bond amount is appropriate. The Crt will deny the
09:16:23 - Judge: Greenwood, Richard
motion without prejudice as of today's date.
09:17:36 - Operator
Stop recording:

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO **APR 20 2010**

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADAMS
J. DAVID NAVARRO, Clerk
By K. JOHNSON
DEPUTY

THE STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP JAMES MORGAN,

Defendant.

Case No. CR-FE-2010-0005111

SCHEDULING ORDER

This matter came before the court on Tuesday, April 20, 2010 for arraignment and with the defendant pleading not guilty the Court set this matter for Tuesday, July 06, 2010 at 01:30 PM for a Pretrial Conference and Wednesday, July 14, 2010 at 09:00 AM for a Jury Trial of the above named Defendant, PHILLIP JAMES MORGAN. The attorneys present were:

For the State: Shelley Armstron

For the Defendant: David Alan Stewart

The Defendant entered a plea of not guilty and requested a jury trial. The court instructed the clerk to enter the plea of not guilty into the court minutes.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The 2 day jury trial of this action shall commence before this court on **July 14, 2010**, at 9:00 a.m.
- 2) Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. Phillip M. Becker
Hon. G.D. Carey
Hon. Dennis Goff
Hon. George R. Reinhart, III
Hon. Ronald Schilling
Hon. W. H. Woodland
Hon. Kathryn A. Sticklen

Hon. James Judd
Hon. Duff McKee
Hon. Daniel Meehl
Hon. Daniel C. Hurlbutt, Jr.
Hon. Nathan Higer
Hon. Linda Copple Trout
Hon. Barry Wood

All Sitting Fourth District Judges

Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **July 6, 2010**, at 1:30 p.m. for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). Exhibit and witness lists shall also be submitted to the Court via email at kajohnson@adaweb.net.

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. Requested instructions shall also be submitted to the Court via email at dclykema@adaweb.net. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 28 day of April, 2010.



RICHARD D. GREENWOOD
District Judge

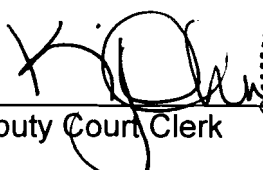
CERTIFICATE OF MAILING

I hereby certify that on this 28th day of April, 2010, I mailed (served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

DAVID STEWART
ATTORNEY AT LAW
PO BOX 9462
BOISE ID 83707
MAILED

J. David Navarro
Clerk of the District Court

By 
Deputy Court Clerk

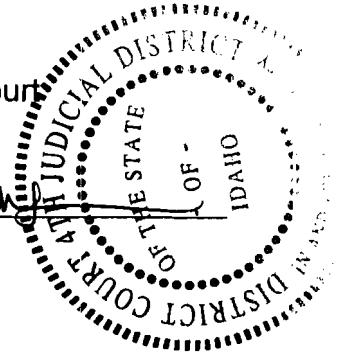


EXHIBIT LIST

The Plaintiff's are assigned 1 – 100 and the defendant's are assigned 500 -- 600. Please contact the clerk if additional numbers are needed, multiple parties are involved, or if there are other problems.

Richard D. Greenwood, DISTRICT JUDGE
Kathy Johnson, DEPUTY CLERK
Leslie Anderson, COURT REPORTER

CASE NO: **CR-FE-2010-0005111**

DATE(S):

STATE OF IDAHO

VS. PHILLIP JAMES MORGAN

Check for Plaintiff (s) List ✓

Check for Defendant (s) List ✓

(DO NOT USE AUTO-NUMBERING)

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT

Exhibit 1

NO. _____ FILED _____
 A.M. _____ P.M. _____

MAY 10 2010

J. DAVID NAVARRO, Clerk
 By JANA E PETERSON
 DEPUTY

DAVID STEWART LAW
 David A. Stewart, Esq.
 Attorney for Defendant
 950 W Bannock Street, Ste 1100
 Boise, Idaho 83702
 Tel. (208) 850-5928
 Fax. (208) 473-2930
 E-mail: davids@davidastewartlaw.com
 ISB# 7932

**IN THE FOURTH JUDICIAL DISTRICT COURT
 ADA COUNTY, STATE OF IDAHO**

STATE OF IDAHO,
 Plaintiff,

-vs-

PHILLIP JAMES MORGAN,
 Defendant.

Case No. CR-FE-2010-0005111

**MOTION TO SUPPRESS AND
 MEMORANDUM IN SUPPORT
 THEREOF**

MOTION

COMES NOW Defendant, PHILLIP JAMES MORGAN, by and through counsel of record, David A. Stewart, pursuant to Rule 12(b) of the Idaho Rules of Criminal Procedure, and based upon the accompanied Memorandum of Points and Authorities, hereby moves this Court to suppress and exclude evidence seized or discovered in violation of the Fourth and Fifth Amendment of the Constitution of the United States of America.

MEMORANDUM

STATEMENT OF FACTS

(The following is derived from DR# 2010-006058, Reported by S. Stace of Boise Police Dept.)

1. On March 12, 2010 around 9:10 p.m., Officer STACE of the Boise Police Department was turning eastbound on Taft Street from southbound Sycamore Drive when he observed a maroon SUV traveling westbound on Taft Street.
2. STACE observed that the maroon SUV did not have a front license plate displayed. As the vehicle passed STACE's location, STACE did not observe the rear license plate but STACE decided to turn around and follow the SUV.
3. Once STACE turned around, he observed the SUV turn southbound on Sycamore Drive. STACE continued to follow the SUV and as he did so he observed the SUV turn northbound on Silver Street.
4. STACE continued to follow the SUV along Silver Street and observed the SUV turn westbound on Taft Street which was near the same location where STACE first observed the SUV. STACE followed the SUV on Taft Street where the SUV came to a stop partially blocking the roadway. STACE did note that the vehicle he was following was displaying a license plate out of Arkansas. At this point STACE activated his overhead lights and effected a traffic stop of the SUV.
5. STACE then exited his vehicle and approached on foot to the SUV. STACE made contact with the driver of the SUV on the driver's side window. At this point STACE detected a

combination of cologne and body odor. STACE also believed he detected a faint smell of alcohol coming from the vehicle.

6. STACE also observed in the center console a bottle of cologne.
7. STACE requested the driver to produce identification which upon request the driver produced an Arkansas Identification Card that identified the driver as Phillip MORGAN. As MORGAN handed his Identification Card to STACE he made a spontaneous statement indicating that he was not supposed to be driving.
8. STACE observed that MORGAN spoke with a thick tongue. STACE also observed an adult female passenger in the front passenger seat. The female passenger was identified by Idaho Identification Card as Amber Morgan, MORGAN's niece.
9. STACE stepped away from the SUV and conducted through dispatch a license verification of both MORGAN and his niece. Dispatch returned with verification that MORGAN's driving privileges were suspended out of Arkansas for a prior Driving Under the Influence (DUI) conviction. Dispatch also advised that within the last 10 years, MORGAN had a total of two prior convictions for DUI.
10. STACE also requested an assist unit be dispatched to his location. Once an assist unit arrived, Officer MORENO, STACE instructed MORGAN to exit the SUV.
11. Prior to conducting field sobriety tests, STACE asked MORGAN about medical issues. MORGAN responded by stating he was rendered disabled due to a serious accident a few years prior where his left leg was unsteady and that he suffered head injuries where metallic plates were surgically implanted in his face and head.

12. The first test that STACE administered was the Horizontal Gaze Nystagmus. From this test, STACE only observed two clues, lack of smooth pursuit in both eyes.
13. The second test that STACE conducted was the Hand Pat test where after three attempts MORGAN was asked to stop the test to which he complied.
14. The third test that STACE conducted was the one leg stand. MORGAN submitted to this test by standing on his right leg. STACE observed that MORGAN made two attempts to complete this test where each time MORGAN put his foot down several times before STACE told MORGAN to stop the test.
15. The final test that STACE conducted was the nine-step walk and turn. STACE observed MORGAN miss heel-to-toe nearly on all steps and stepping off-line several times.
16. As the result of MORGAN's performance, STACE arrested MORGAN for DUI. STACE then transported MORGAN to the county jail where he submitted to a breath test. Both samples were .067 BAC.
17. STACE then questioned MORGAN about illegal drug use, particularly use of marijuana. In response to this line of questioning, MORGAN admitted to using marijuana earlier that day.
18. A subsequent blood draw of MORGAN and lab testing verified that MORGAN had used marijuana previous to the stop.

ARGUMENT

I. THE TRAFFIC STOP WAS NOT SUPPORTED BY REASONABLE SUSPICION

A traffic stop by an officer constitutes a seizure of the vehicle's occupants and implicates the Fourth Amendment's prohibition against unreasonable searches and seizures. *Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Idaho App. 1996); citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). Under the Fourth Amendment, an officer may stop a vehicle to investigate possible criminal behavior if there is a reasonable and articulable suspicion that the vehicle is being driven contrary to traffic laws. *United States v. Cortez*, 449 U.S. 411, 417 (1981); *State v. Rawlings*, 121 Idaho 930, 932, 829 P.2d 520, 522 (1992); *State v. Flowers*, 131 Idaho 205, 208, 953 P.2d 645, 648 (Ct. App. 1998). The reasonableness of the suspicion must be evaluated upon the totality of the circumstances at the time of the stop. *State v. Ferreira*, 133 Idaho 474, 483, 988 P.2d 700, 709 (Ct. App. 1999).

The reasonable suspicion standard requires less than probable cause but more than mere speculation or instinct on the part of the officer. *Id.* An officer may draw reasonable inferences from the facts in his or her possession, and those inferences may be drawn from the officer's experience and law enforcement training. *State v. Montague*, 114 Idaho 319, 321, 756 P.2d 1083, 1085 (Ct. App. 1988). However, suspicion will not be found to be justified if the conduct observed by the officer fell within the broad range of what can be described as normal driving behavior. *Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Idaho App. 1996). *See also*, *State v. Naccarato*, 126 Idaho 10, 12, 878 P.2d 184, 186 (Idaho Ct. App. 1994).

The facts stated in the officer's report indicate that officer Stace observed a vehicle with no front license plate and turned and followed the vehicle. The vehicle traveled around a block from Taft Street to Sycamore Dr. to State St. then to Silver St. and finally back to Taft St. where the vehicle stopped. Officer Stace's report indicates that the vehicle was at least partially in the road way. At this time officer Stace initiated a traffic stop by turning on his overhead lights and recorder. The facts reported by officer Stace indicate no illegal activity. The vehicle was licensed in Arkansas and had a rear license plate displayed as required by Arkansas law. Ark. Code § 27-14-716. Stopping a vehicle in a manner that does not completely obstruct the road is not specifically prohibited by Idaho Statutes. See I.C. §§ 49-659, 49-660.

The facts in this case are similar to those of *Emory* where a vehicle was stopped after the officer observed a delay of five to six seconds after a traffic light changed before the vehicle moved. When the road narrowed the driver (Emory) drove the vehicle straight which was very close to parked vehicles. The court stated that the inferences to support reasonable suspicion must be evaluated against the "backdrop of everyday driving experience." *State v. Emory*, 119 Idaho 661, 664, 809 P.2d 522, 525 (Idaho Ct. App.1991).

In the instant case officer Stace observed a vehicle, with an Arkansas license plate, complete a number of turns and then stop on a roadway. None of these actions are contrary to traffic laws. Furthermore, officer Stace does not note any improper driving while the vehicle negotiated these several intersections. This observed activity, which is not contrary to traffic laws, does not give rise to reasonable suspicion. The traffic stop was only based on the officer's speculation or instinct and represents an improper, illegal seizure under the Fourth Amendment.

Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Idaho App. 1996). Therefore, all evidence derived from the unlawful seizure of Defendant should be excluded.

II. POLICE LACKED PROBABLE CAUSE TO SUPPORT A LAWFUL ARREST OF DEFENDANT.

In the State of Idaho a police officer may arrest a suspect without a warrant “[w]hen a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.” I.C. § 19-603. When determining whether probable cause exists at the time of arrest analysis focuses on the information and facts the officers possessed at the time. *State v. Maland*, 140 Idaho 817, 823, 103 P.3d 430, 436 (2004).

Along with other indicia of impairment, such as an irregular driving pattern, failing standard field sobriety test does give rise to probable cause for an arrest of the driver suspected of driving under the influence of drugs and alcohol. *State of Idaho v. Jordan*, 122 Idaho 771, 775, 839 P.2d 38, 42 (Idaho App. 1992). However, with nothing more than failing field sobriety tests does not give rise to probable cause that the driver is impaired and driving under the influence of alcohol and drugs. *See State v. Armbruster*, 117 Idaho 19, 20, 784 P.2d 349, 350 (Idaho App. 1989).

In the instant case, Officer Stace followed Defendant’s vehicle around the block without noting any traffic laws or without noting any irregular unsafe driving patterns. Once officer Stace made contact with Defendant, he noticed an strong odor of cologne along with a possible faint odor of alcohol. Officer Stace then had Defendant submit to field sobriety test.

The first test conducted was the horizontal gaze nystagmus test where only two clues were detected, in other words, Defendant past the initial test.

Before submitting to the other two tests, Defendant informed the officer of his physical disability, that Defendant's left leg was unstable due to a leg injury where his knee was essentially dislocated. Despite this fact, the officer had Defendant perform the remaining field sobriety tests upon which Defendant failed the remaining two tests. Although Defendant failed two of the three standard field sobriety tests, two of the tests were compromised due to Defendant's physical disability.

Therefore, without more, such as an irregular unsafe driving pattern, officer Stace lacked probable cause to lawfully arrest Defendant for Driving Under the Influence violation. Wherefore, any evidence seized or discovered as a derivative to the unlawful arrest of Defendant should be excluded.

III. THE OFFICER FAILED TO ADMINISTER *MIRANDA* WARNINGS TO DEFENDANT AND ACQUIRE A WAIVER OF THOSE RIGHTS.

It is well settled that "an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation." *Miranda v. Arizona*, 384 U.S. at 471. These particular warnings, also known as *Miranda* warnings, are mandated where an individual is subject to police custodial interrogation. *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (citations omitted). Custody is a fact determined by "whether there is a 'formal arrest or restraint on freedom of movement' of the

degree associated with a formal arrest.” *Id.* (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (*per curiam*)).

To determine whether custody has attached, “a court must examine all of the circumstances surrounding the interrogation.” The test is an objective one and “the only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.” *State v. James*, ___ Idaho ___, ___ P.3d ___, No. 35856 (Idaho March 16, 2010) (quoting *Stansbury v. California*, 511 U.S. 318, 322 (1994) and *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984)). *See also State v. Doe*, 137 Idaho 519, 523, 50 P.3d 1014, 1018 (2002). In Idaho the defendant bears the burden of proof regarding custody for purposes of *Miranda*. *State v. James*, ___ Idaho ___, ___ P.3d ___, No. 35856 (Idaho March 16, 2010), citations omitted.

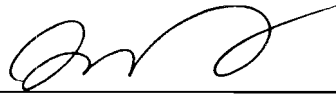
The factors considered in the *Berkemer* case included: the duration of the stop, the number of questions, and the visibility of the stop. *Id.* In *Berkemer* the subject was never told that his detention would not be temporary. *Id.*

In the instant case it is clear that the statement concerning illegal drug use from Defendant was a response to police questioning while Defendant was in police custody. The questioning occurred after Defendant has been arrested for Driving Under the Influence based upon a failure to Field Sobriety Tests. Nowhere in the police narrative does it indicate that Defendant was advised of his *Miranda* rights and that Defendant knowingly, intelligently, and voluntarily waived those rights. Therefore, the incriminating statement that Defendant smoked marijuana and all derivative blood evidence should be excluded from evidence as both were acquired through Defendant’s violation of *Miranda*.

CONCLUSION

Based upon the foregoing reasons stated herein, evidence obtained as a result of an unlawful traffic stop, unlawful arrest, and derivative evidence acquired as a result of a violation of *Miranda* should be excluded and the Defendant's Motion to Suppress should be granted.

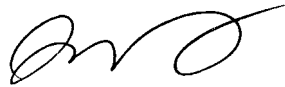
RESPECTFULLY SUBMITTED this 10th day of May, 2010.



DAVID A. STEWART
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served, by hand delivered, a true and correct copy of the foregoing Motion to Suppress Evidence and Memorandum in Support Thereof to the office of the Ada County Prosecuting Attorney, 200 W Front Street, Rm 3191, Boise, Idaho, 83702 on this 10th day of May, 2010.



DAVID A. STEWART

MAY 27 2010

J. DAVID NAVARRO, Clerk
By **SCARLETT RAMIREZ**
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Shelley W. Armstrong
Deputy Prosecuting Attorney
200 West Front Street
Boise, Idaho 83702-5954
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR FE 2010-005111
)	
vs.	)	MOTION TO RESET JURY
	)	TRIAL
PHILLIP MORGAN,)	
)	
Defendant.)	
_____)	

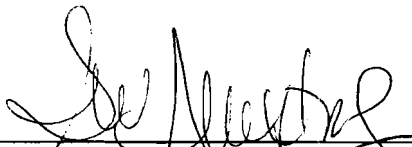
COMES NOW, Shelley W. Armstrong, Deputy Prosecuting Attorney for Ada County, State of Idaho, and moves this Court to reset the jury trial date in the above-entitled case and as grounds states:

The information was filed April 15, 2010. The defendant pled not guilty on April 20, 2010, and the court set the case for jury trial to begin July 14, 2010. The State is requesting the court reset the two day trial as the State's attorney will be unavailable on a prepaid family vacation during the week of July 14, 2010. The defendant is not in custody and his right to a speedy trial does not run until October 14, 2010.

WHEREFORE, the State prays for an order granting a short reset of the jury trial in the above-entitled case.

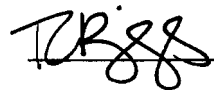
DATED this 26th day of May, 2010.

GREG H. BOWER
Ada County Prosecuting Attorney


By: Shelley W. Armstrong
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that I emailed and faxed a true and correct copy of the foregoing Motion to: David Stewart on May 27, 2010.



MAY 27 2010

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Shelley W. Armstrong
Deputy Prosecuting Attorney
200 West Front Street
Boise, Idaho 83702
Telephone: (208) 287-7700

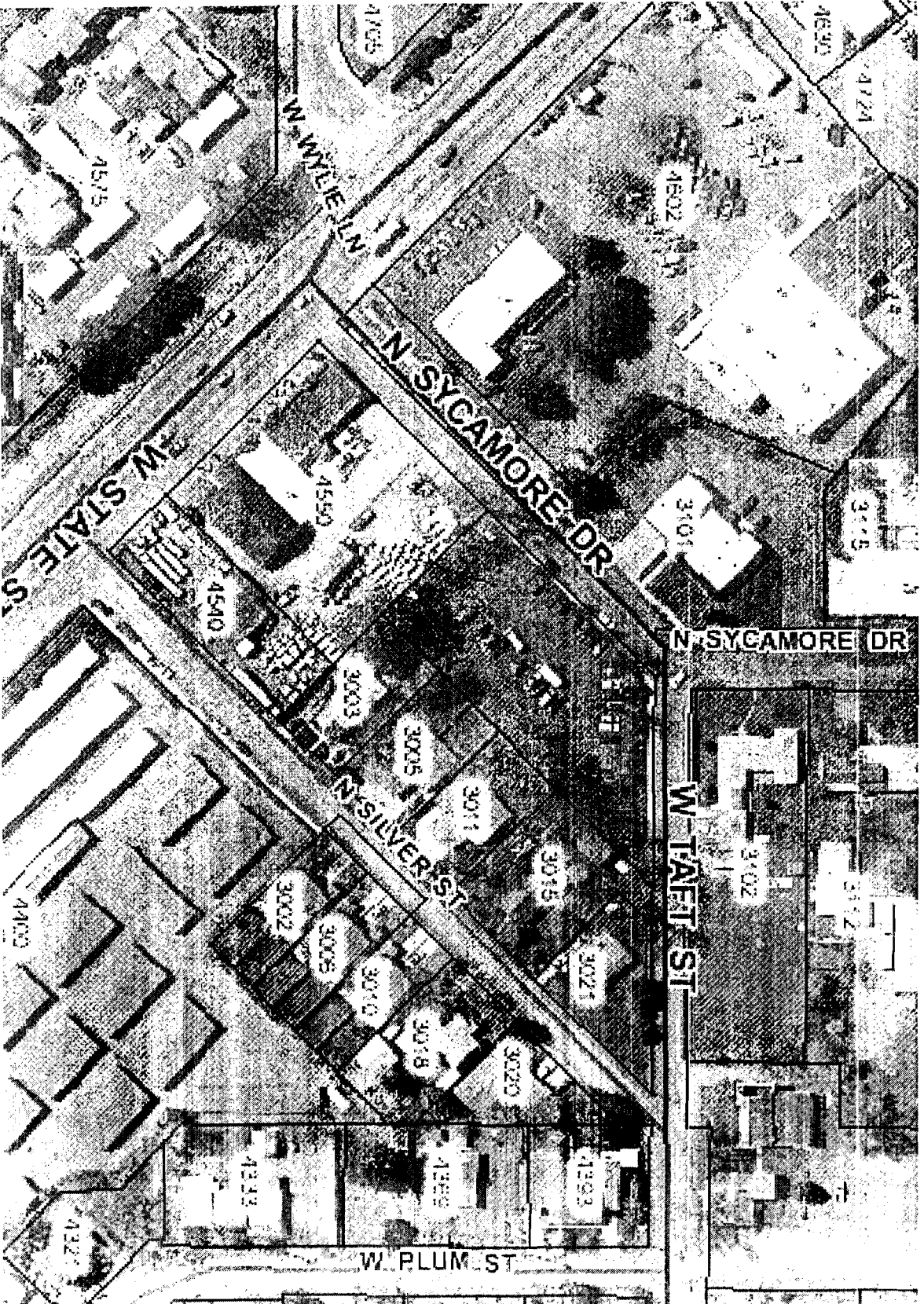
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CRFE 100005111
)	
vs.	)	STATE'S RESPONSE TO
	)	DEFENDANT'S MOTION TO
PHILLIP MORGAN,	)	SUPPRESS
)	
Defendant.)	
_____)	

COMES NOW, Shelley W. Armstrong, Ada County Deputy Prosecuting Attorney, and lodges this memorandum in support of it's response to Morgan's motion to suppress.

Relevant Facts

On March 12, 2010, at 9:20 p.m., Officer Stace of the Boise Police Department saw Morgan driving a maroon SUV westbound on Taft Street. Officer Stace was turning eastbound on Taft from southbound Sycamore Drive when he saw Morgan. As he passed, Stace saw that there was no front license plate on the car. Officer Stace made a u-turn and saw the SUV turn left onto southbound Sycamore Dr. and then eastbound onto State Street. When Stace got to State Street, he saw the SUV turn onto Silver Street, which dead ends into Taft; near the area where Stace first saw the SUV. *See State's Exhibit #1 attached.* Stace will testify that he believed the SUV was trying to "avoid" him by essentially driving in a circle back to the same place.



State's Exhibit 1

MAY 27 2010

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Shelley Armstrong

Deputy Prosecuting Attorney

200 West Front Street, Room 3191

Boise, ID 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP JAMES MORGAN,

Defendant,

Case No. CR-FE-2010-0005111

NOTICE OF HEARING

TO: David Stewart, Attorney of Record, you will please take notice that on the 15th day of June, 2010, at the hour of 10:00 am of said day, or as soon thereafter as counsel can be heard, Deputy Prosecuting Attorney Shelley Armstrong will move

this Honorable Court for Defendant's Motion to Suppress and Motion to Continue to Jury Trial in the above-entitled action.

DATED this 27 day of May 2010.

GREG H. BOWER

Ada County Prosecuting Attorney




By: Shelley Armstrong
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 27th day of May 2010, I caused to be served, a true and correct copy of the foregoing **Notice of Hearing** upon the individual(s) named below in the manner noted:

Name and address: David Stewart, 950 W Bannock St, Ste 1100, Boise, ID 83702

- ☒ By depositing copies of the same in the United States mail, postage prepaid first class.
- ☐ By depositing copies of the same in the Interdepartmental Mail.
- ☐ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number:



Legal Assistant

Session: Greenwood061510
Session Date: 2010/06/15
Judge: Carey, George D.
Reporter: Anderson, Leslie

Division: DC
Session Time: 08:24

Courtroom: CR504

Clerk(s):
Johnson, Kathy

State Attorney(s):
Armstrong, Shelley
Hemmer, Casey
Medema, Jonathan

Public Defender(s):
Cahill, August
Rolfson, Eric
Simmons, Kimberly

Prob. Officer(s):

Court interpreter(s):

Case ID: 0011

Case number: CRFE10.5111
Plaintiff:
Plaintiff Attorney:
Defendant: Morgan, Phillip
Additional audio and annotations can be found in case: 0013.
Co-Defendant(s):
Pers. Attorney:
State Attorney: Armstrong, Shelley
Public Defender:

2010/06/15

09:59:12 - Operator
Recording:
09:59:12 - New case
Morgan, Phillip
09:59:21 - Judge: Carey, George D.
The Crt calls case deft present in custody with counsel.
10:00:41 - State Attorney: Armstrong, Shelley
Requests a short recess.
10:00:59 - Operator
Stop recording:
10:20:35 - Operator
Recording:
10:20:35 - Record
Morgan, Phillip
10:20:38 - Judge: Carey, George D.
Back on the record.
10:20:53 - Judge: Carey, George D.
Will continue the matter until 11:00 am.

10:21:34 - Operator
Stop recording:

Case ID: 0013

Case number: CRFE10.5111
Plaintiff:
Plaintiff Attorney:
Defendant: Morgan, Phillip
Previous audio and annotations can be found in case: 0011
Co-Defendant(s):
Pers. Attorney: Stewart, David
State Attorney: Armstrong, Shelley
Public Defender:

11:20:20 - Operator
Recording:
11:20:20 - Recall
Morgan, Phillip
11:20:32 - Judge: Carey, George D.
The Crt recalls case.
11:20:40 - Judge: Carey, George D.
Deft present in custody with counsel.
11:20:49 - State Attorney: Armstrong, Shelley
Argument on continuing the jury trial.
11:22:08 - Pers. Attorney: Stewart, David
Response to the argument on continuing the trial.
11:23:22 - State Attorney: Armstrong, Shelley
Response to argument on continuance.
11:25:02 - Judge: Carey, George D.
The Crt set this matter for JT on July 28, 2010 at 9:00 am and PT on July 6,
11:25:27 - Judge: Carey, George D.
2010 at 1:30 pm.
11:25:43 - State Attorney: Armstrong, Shelley
Counsel will stipulate to admit Defense Exhibits A B.
11:26:35 - Pers. Attorney: Stewart, David
Will stipulate.
11:26:40 - Judge: Carey, George D.
Exhibits A B are admitted.
11:26:55 - State Attorney: Armstrong, Shelley
Calls Mr. Sean Stace.
11:27:00 - Judge: Carey, George D.
The witness is sworn and testifies.
11:27:20 - State Attorney: Armstrong, Shelley
Direct examination.
11:30:31 - State Attorney: Armstrong, Shelley
State's Exhibit 1 provided to counsel.
11:30:44 - Pers. Attorney: Stewart, David
No objection.
11:30:58 - Judge: Carey, George D.
Without objection State's Exhibits 1 is admitted.
11:31:14 - State Attorney: Armstrong, Shelley
Direct examination continued.
11:34:19 - State Attorney: Armstrong, Shelley
Defense Exhibits A B are provided to the witness. Direct examination

000045

11:34:40 - State Attorney: Armstrong, Shelley
continued.
11:35:47 - State Attorney: Armstrong, Shelley
Witness identifies the deft.
11:35:54 - State Attorney: Armstrong, Shelley
Direct examination continued.
11:39:33 - Judge: Carey, George D.
The Crt addresses counsel.
11:39:41 - State Attorney: Armstrong, Shelley
Response to the Crt's questions.
11:40:09 - Pers. Attorney: Stewart, David
Cross examination.
11:54:37 - State Attorney: Armstrong, Shelley
No redirect.
11:54:43 - Judge: Carey, George D.
The witness steps down and is excused.
11:54:55 - Pers. Attorney: Stewart, David
The defense rests.
11:55:25 - State Attorney: Armstrong, Shelley
Argument on motion.
11:57:55 - Pers. Attorney: Stewart, David
Argument on motion.
12:02:17 - Pers. Attorney: Stewart, David
Grant the motion to suppress.
12:02:22 - Judge: Carey, George D.
The Crt will take the matter under advisement.
12:02:50 - Operator
Stop recording:

NO. _____ FILED _____
A.M. _____ P.M. _____
JUN 24 2010
J. DAVID NAVARRO, Clerk
By JANA LETERSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Shelley W. Armstrong
Deputy Prosecuting Attorney
200 W. Front Street, Room 3191
Boise, Idaho 83702
Telephone: (208) 287-7700

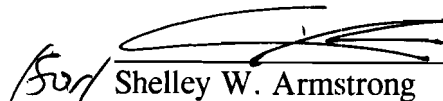
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2010-0005111X
vs.)	
)	
PHILLIP JAMES MORGAN,	)	DISCOVERY
	)	RESPONSE TO COURT
Defendant.)	
)	
)	
)	

COMES NOW, Shelley W. Armstrong Deputy Prosecuting Attorney, in and for the County of Ada, State of Idaho, and informs the Court that the State has complied with the Defendant's Request for Discovery.

RESPECTFULLY SUBMITTED this 23 day of June 2010.

GREG H. BOWER
Ada County Prosecuting Attorney


Shelley W. Armstrong
Deputy Prosecuting Attorney

FILED
A.M. (10) P.M.
JUN 24 2010
J. DAVID NAVARRO, Clerk
By JANAE PETERSON
DEPUTY

GREG H. BOWER
Ada County Prosecuting Attorney

Shelley W. Armstrong
Deputy Prosecuting Attorney
200 W. Front Street, Room 366
Boise, Id. 83702
Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)	
)	
Plaintiff,	)	Case No. CR-FE-2010-0005111
)	
vs.	)	REQUEST FOR DISCOVERY
)	
PHILLIP JAMES MORGAN,)	
)	
Defendant.)	
_____)	

TO THE ABOVE NAMED DEFENDANT:

PLEASE TAKE NOTICE that the undersigned, pursuant to Rule 16 of the Idaho Criminal Rules, requests Discovery and inspection of the following:

(1) Documents and Tangible Objects:

Request is hereby made by the prosecution to inspect and copy or photograph books, papers, documents, photographs, tangible objects or copies or portions thereof, which are

within the possession, custody or control of the defendant, and which the defendant intends to introduce in evidence at trial.

(2) Reports of Examinations and Tests:

The prosecution hereby requests the defendant to permit the State to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant, which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to testimony of the witness.

(3) Defense Witnesses:

The prosecution requests the defendant to furnish the State with a list of names and addresses of witnesses the defendant intends to call at trial.

(4) Expert Witnesses:

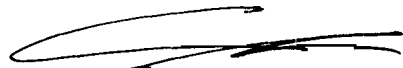
The prosecution requests the defendant to provide a written summary or report of any testimony that the defense intends to introduce pursuant to Idaho Criminal Rule 16(c)(4), including the facts and data supporting the opinion and the witness's qualifications.

(5) Pursuant to Idaho Code Section 19-519, the State hereby requests that the defendant state in writing within ten (10) days any specific place or places at which the

defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom he intends to rely to establish such alibi.

DATED this 23 day of June 2010.

GREG H. BOWER
Ada County Prosecuting Attorney

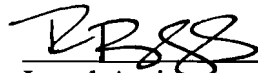

/s/ By: Shelley W. Armstrong
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of June 2010, I caused to be served, a true and correct copy of the foregoing Request for Discovery upon the individual(s) named below in the manner noted:

Name and address: David Stewart, 950 W Bannock St, Ste 1100, Boise, ID 83702

- ☐ By depositing copies of the same in the United States mail, postage prepaid, first class.
- ☐ By depositing copies of the same in the Interdepartmental Mail.
- ☒ By informing the office of said individual(s) that said copies were available for pickup at the Office of the Ada County Prosecutor.
- ☐ By faxing copies of the same to said attorney(s) at the facsimile number: _____


Legal Assistant

JUN 24 2010

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF ADA

By DAVID NAVARRO, Clerk
By K. JOHNSON
DEPUTY

THE STATE OF IDAHO,)	
)	
PLAINTIFF,)	
)	
V.	)	CASE NO. CR-FE-2010-000511
	)	MEMORANDUM AND ORDER
PHILLIP MORGAN,	)	CONCERNING PRE-TRIAL MOTIONS
)	
DEFENDANT.)	
_____)	

The defendant is charged with one count of Felony DUI. He has filed a pre-trial motion to suppress.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In the evening hours of March 12, 2010, Boise Police Officer Stace, who has had more than ten years experience as a law enforcement officer in California and New York, saw an SUV being driven by Defendant Philip Morgan on Taft Street in Boise. The SUV displayed no front license plate in apparent violation of I. C. Section 49-428. It later developed that the SUV was registered in Arkansas where no front license plate is provided.

2. Officer Stace followed the SUV as it circled the block. The direction of travel taken by the SUV lead Officer Stace to believe that the driver was attempting to avoid him, but he observed no violations of the rules of the road in the driving pattern. The SUV came to a complete stop back on Taft St. for no apparent reason, partially blocking one of the travelled lanes of the relatively narrow two-way street. Officer Stace believed, perhaps incorrectly, that the stop in the travelled roadway was a violation of I.C. Section 49-659. These observations, coupled with a suspicion that the driver of the SUV was trying to avoid him, lead Officer Stace to the conclusion

that he should investigate further.

3. He stopped his police car behind the SUV, turned on the overhead lights, and approached the SUV. At the window of the SUV Officer Stace could smell a strong odor of cologne and a slight odor of alcohol. The officer observed a bottle of cologne next to the driver, Mr. Morgan. These observations lead him to suspect that Mr. Morgan was attempting to mask the smell of alcohol. He asked Mr. Morgan for identification, and Mr. Morgan volunteered that he was not supposed to be driving. A records check showed that his license had been suspended for a driving while intoxicated conviction.

4. The officer also observed that Mr. Morgan was speaking in a "thick-tongued" manner and that his tongue was green. He asked Mr. Morgan about consumption of alcohol and drugs. At first Mr. Morgan denied any such use but then admitted that he had consumed some marijuana and a tallboy of beer at some time earlier that day.

5. The officer asked Mr. Morgan to do some standard field sobriety tests. Prior to administration of the test Officer Stace also asked if Mr. Morgan had any infirmities, to which he replied that he was missing part of a leg bone and had a plate in his head.

6. In the officer's opinion Mr. Morgan failed three of the four tests. Up to this time the officer had not informed Mr. Morgan of his *Miranda* rights.

7. Following administration of the field sobriety tests Officer Stace arrested Mr. Morgan for driving under the influence and had him transported to jail.

8. A breath test at the police station had a result of .067 percent. A blood draw confirmed that Mr. Morgan had used marijuana at some time prior to his interaction with Officer Stace.

9. The state does not anticipate using any statements made by the defendant subsequently to being placed formally under arrest.

10. Mr. Morgan has moved to suppress

11. Mr. Morgan contends first that the stop was not supported by reasonable suspicion. The initial stop on Taft Street was Mr. Morgan's voluntary act and did not amount to an investigatory stop. Compare, *State v. Jordan*, 122 Idaho 771, 839 P.2d 38 (Ct. App. 1992). Officer Stace's subsequent act of turning on his overhead lights, however, was a clear indication that Mr. Morgan was not free to drive off. Thus a stop and detention was implicated in this case.

12. The stop and detention must comport with constitutional standards of reasonableness. An automobile investigatory stop and detention is justified under the Fourth amendment if the officer has a reasonable suspicion, based on specific articulable facts, together with the rational inferences therefrom, that warrant suspicion that the person stopped has been or is about to commit a crime. *State v. Benefiel*, 131 Idaho 226, 953 P.2d 976 (1998) and cases cited therein. Furthermore, "A person temporarily detained pursuant to an ordinary traffic stop is not in custody for purposes of *Miranda*." *State v. Benefiel*, 131 Idaho at 229.

13. It goes without saying that Officer Stace's suspicion that Mr. Morgan was avoiding him was not the type of suspicion sufficient to permit an investigatory stop and detention. Nevertheless, at the time of the initiation of the temporary stop and detention, that is, when the overhead lights went on subsequently to Mr. Morgan's voluntary stop, Officer Stace also had a reasonable articulable suspicion that the defendant had violated I.C. Sections 49-428 and 49-659. These reasonable suspicions justified the initial investigatory detention. They were more than mere hunches. That it later was determined that in fact those statutes may not have been violated is irrelevant.

14. Officer Stace's subsequent observations of the odor of alcohol combined with Mr. Morgan's admissions about not being allowed to drive and using drugs and

alcohol justified the continued detention and administration of field sobriety tests. The administration of field sobriety tests did not turn the stop into an arrest. It was merely part of the temporary investigatory detention. *State v. Ferreira*, 133 Idaho 474, 988 P.2d 700 (Ct. App. 1999).

15. Mr. Morgan next argues that Officer Stace lacked probable cause to arrest him for driving under the influence of alcohol or drugs. A peace officer may make an arrest without a warrant for a public offence committed in his presence. I. C. Section 19-603. That Officer Stace did not see a violation of the rules of the road or a bad driving pattern does not end our inquiry. Compare, *State v. Jordan*, 122 Idaho 771, 839 P.2d 38 (Ct. App. 1992). Officer Stace did see Mr. Morgan operating a motor vehicle. He then heard Mr. Morgan's admissions about drinking and drug use, and in addition he saw Mr. Morgan's failed field sobriety tests. All of the factors taken together would lead a reasonable person objectively to have probable cause to conclude that Mr. Morgan had been operating a motor vehicle while under the influence of a combination of drugs and alcohol and that the crime had been committed in Officer Stace's presence. The arrest was lawful. The case cited by Mr. Morgan, *State v. Armbruster*, 117 Idaho 19, 784 P.2d 349 (Ct. App. 1989), does not appear to support his position.

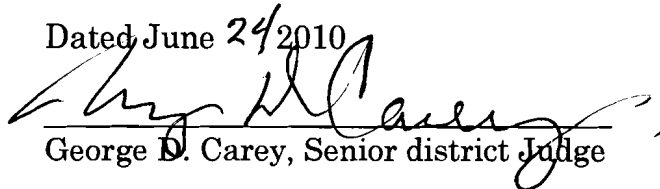
16. Mr. Morgan argues that his statements must be suppressed, because he was not advised of his *Miranda* rights. As noted above, the evidence in the record shows that Mr. Morgan's admissions about drug and alcohol use were made during the investigatory stop and before he was taken into custody. *Miranda* was not implicated. *State v. Benefiel*, 131 Idaho 229. In reaching this conclusion, the court is acting on the state's assurances that it does not intend to offer any incriminating statements made by Mr. Morgan after he was taken into custody.

17. For the foregoing reasons Mr. Morgan's motion to suppress will be denied.

ORDER

It hereby is ordered that the motion to suppress filed by the defendant on May 10, 2010, is denied.

Dated June 24, 2010


George D. Carey, Senior district Judge

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of June, 2010, I served a true and accurate photocopy of the foregoing document to the persons identified below by the method indicated:

Ada County Prosecuting Attorney

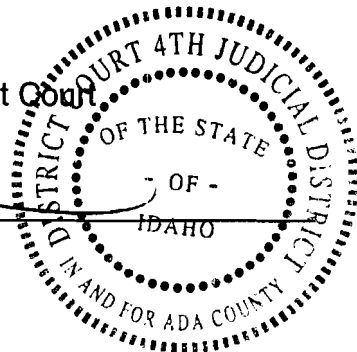
☐ By United States mail
☐ By telefacsimile
☒ By personal delivery
☐ By overnight mail/Federal Express

David Stewart
Attorney at Law
PO Box 9462
Boise ID 83707

☒ By United States mail
☐ By telefacsimile
☐ By personal delivery
☐ By overnight mail/Federal Express

J. David Navarro
Clerk of the District Court


Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA.

THE STATE OF IDAHO,
Plaintiff,

vs.

MORGAN PHILLIP JAMES
Defendant

NOTICE OF COURT DATE
AND
BOND RECEIPT

NO. _____
A.M. 9 / _____

JUL 02 2010

J. DAVID NATHANIEL, JR.
By C. H. H. H. H. H.

YOU ARE HEREBY NOTIFIED that you must appear in Court
on 06 July 2010 at 01:30PM hrs, at the:

Ada County Courthouse
200 West Front Street
Boise, 83702

You are further notified that if you fail to appear as specified herein, your bond
will be forfeited and a Warrant of Arrest will be issued against you.

BOND RECEIPT No: 382587

Charge: 18-8004 {F} DRIVING UNDER THE INFLUENCE

Bond Amount: \$ 25,000.00

Case # CRFE20100005111

REFILE*W/SCRAM

Bond # S25 01586132

Bond Type: Surety

Warrant #:

Agency: Absolute Bail Bonds LLC

Insurance: Seneca Insurance Co.

Bondsman: ALMARAZ AMY

Address: PO Box 123
Homedale, ID 83628

This is to certify that I have received a copy of this
NOTICE TO APPEAR. I understand that I am being released on the
conditions of posting bail and my promise to appear in the court
at the time, date, and place described in this notice.

DATED: 07/02/2010

P Morgan
DEFENDANT

NO. _____
A.M. _____ P.M. _____
FILED
JUL 06 2010
J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

DAVID STEWART LAW
950 W Bannock Street, Ste 1100
Boise, Idaho 83702

David A. Stewart
Attorney for Defendant
Tel. (208) 850-5928
Fax. (208) 473-2960
Email: davids@davidastewartlaw.com

IN THE FOURTH JUDICIAL DISTRICT COURT
ADA COUNTY, STATE OF IDAHO

STATE OF IDAHO,
Plaintiff,

-vs-

PHILLIP J. MORGAN,
Defendant.

CR-FE-2010-005111

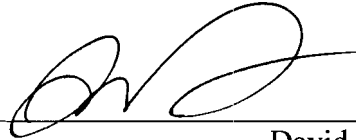
RESPONSE TO STATE'S REQUEST FOR
DISCOVERY

COMES NOW Defendant, PHILLIP J. MORGAN, by and through counsel, David A. Stewart,
and makes the following Response to Discovery pursuant to Rule 16.

- (1) Defendant has already provided the State with copies of the photographs he intends to introduce at trial. These photographs have already been received into evidence at the Suppression Hearing held on June 15th, 2010. No other photographs, exhibits, documents or tangible objects will be introduced at trial by Defendant.
- (2) Defendant will not be introducing any reports, examinations, or tests trial nor have any reports, examinations, or tests been requested or generated at the request of Defendant.
- (3) Defendant does not intend to call any witnesses at trial.
- (4) Defendant does not intend to call any expert witnesses at trial.

(5) Defendant does not have an alibi to the charged offense.

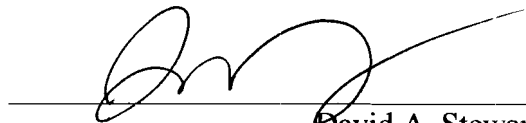
DATED this 3rd day of July, 2010.



David A. Stewart
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2010, I caused to be served, a true and correct copy of the foregoing Response to State's Request for Discovery via U.S. mail postage pre-paid, first class to Shelley Armstrong, Deputy Prosecuting Attorney, 200 W Front Street, Rm 3191, Boise, Idaho 83702.



David A. Stewart
Attorney for Defendant

JUL 06 2010

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

DAVID STEWART LAW
950 W Bannock Street, Ste 1100
Boise, Idaho 83702

David A. Stewart
Attorney for Defendant
Tel. (208) 850-5928
Fax. (208) 473-2960
Email: davids@davidastewartlaw.com

IN THE FOURTH JUDICIAL DISTRICT COURT
ADA COUNTY, STATE OF IDAHO

STATE OF IDAHO,
Plaintiff,

-VS-

PHILLIP J. MORGAN,
Defendant.

CR-FE-2010-005111

DISCOVERY RESPONSE TO COURT

COMES NOW Defendant, PHILLIP J. MORGAN, by and through counsel, David A. Stewart,
and informs the Court that the Defendant has complied with the State's Request for Discovery

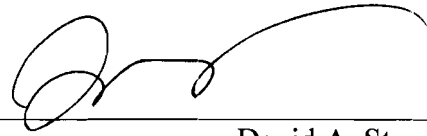
DATED this 3rd day of July, 2010.



David A. Stewart
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July, 2010, I caused to be served, a true and correct copy of the foregoing DISCOVERY RESPONSE TO COURT via U.S. mail postage pre-paid, first class to Shelley Armstrong, Deputy Prosecuting Attorney, 200 W Front Street, Rm 3191, Boise, Idaho 83702.

A handwritten signature in black ink, appearing to read 'David A. Stewart', is written over a horizontal line.

David A. Stewart
Attorney for Defendant

Session: Greenwood070610
Session Date: 2010/07/06
Judge: Carey, George D.
Reporter: Benjamin, Bev

Division: DC
Session Time: 08:24

Courtroom: CR503

Clerk(s):
Johnson, Kathy

State Attorney(s):
Alidjani, Fafa
Armstrong, Shelley
Guzman, Cathy
Hemmer, Casey
Reilly, Heather

Public Defender(s):
Simmons, Kimberly

Prob. Officer(s):

Court interpreter(s):

Case ID: 0018

Case number: CRFE10.5111
Plaintiff:
Plaintiff Attorney:
Defendant: Morgan, Phillip
Co-Defendant(s):
Pers. Attorney: Stewart, David
State Attorney: Armstrong, Shelley
Public Defender: Simmons, Kimberly

2010/07/06

14:05:02 - Operator
Recording:
14:05:02 - New case
Morgan, Phillip
14:05:10 - Judge: Carey, George D.
The Crt calls case deft present on bond with counsel.
14:05:46 - Judge: Carey, George D.
The Crt reviews the file.
14:06:06 - State Attorney: Armstrong, Shelley
Statement regarding the trial setting - the witness is unavailable and
14:06:30 - State Attorney: Armstrong, Shelley
requests a set over.
14:06:34 - Pers. Attorney: Stewart, David
Does want to go to trial but will not waive his speedy trial rights.
14:08:21 - Judge: Carey, George D.
The Crt set this matter for JT September 29, 2010 at 9:00 am and PT September
14:08:46 - Judge: Carey, George D.
14, 2010 at 1:30 pm.
14:08:52 - Pers. Attorney: Stewart, David

000062

Requests a weekly UA test and not have a scram device.

14:09:11 - State Attorney: Armstrong, Shelley
Response regarding the scram bracelet.

14:09:43 - State Attorney: Armstrong, Shelley
If this request is given then the bond amt should be reset to \$50,000.00

14:10:05 - State Attorney: Armstrong, Shelley
instead of \$25,000.00.

14:10:22 - Judge: Carey, George D.
The Crt addresses counsel.

14:10:40 - Judge: Carey, George D.

14:10:41 - State Attorney: Armstrong, Shelley
Response.

14:11:00 - Pers. Attorney: Stewart, David
Statement regarding the State's comments.

14:12:38 - State Attorney: Armstrong, Shelley
Statement regarding where the deft will be doing the UA's.

14:12:51 - Pers. Attorney: Stewart, David
Response.

14:13:33 - Judge: Carey, George D.
The Crt will order that in lieu of the scram that the deft can do weekly UA's

14:13:59 - Judge: Carey, George D.
and counsel to prepare the order. Provide in the order who will do the UA's.

14:14:33 - State Attorney: Armstrong, Shelley
Statement.

14:14:37 - Judge: Carey, George D.
The UA's will be provided to the Crt and the prosecutor. Until he receives

14:14:51 - Judge: Carey, George D.
the order the deft will still have the scram bracelet.

14:15:16 - Operator
Stop recording:

JUL 07 2010

DAVID STEWART LAW
950 W Bannock Street, Ste 1100
Boise, Idaho 83702

J. DAVID NAVARRO, Clerk
By K. JOHNSON
DEPUTY

David A. Stewart
Attorney for Defendant
Tel. (208) 850-5928
Fax. (208) 473-2960
Email: davids@davidastewartlaw.com

IN THE FOURTH JUDICIAL DISTRICT COURT
ADA COUNTY, STATE OF IDAHO

STATE OF IDAHO,
Plaintiff,

-vs-


PHILLIP J. MORGAN,
Defendant.

CR-FE-2010-005111

DEFENDANT'S PROPOSED JURY
INSTRUCTIONS

COMES NOW Defendant, Phillip J. Morgan, by and through counsel, David A. Stewart,
and hereby submits the following instructions for the jury and requests that they be included in
the Courts Instructions to the Jury.

Respectfully submitted this 6th day of July, 2010.



DAVID A. STEWART
Attorney for Defendant



000064

INSTRUCTION NO. _____

The State is required to prove beyond a reasonable doubt that Defendant was impaired while he was operating a motor vehicle. Impairment means that Defendant was incapable of operating the motor vehicle safely.

State v. Lesley, 133 Idaho 23, 26 (Idaho App. 1999)

State v. Feasel, 148 Idaho 312, 22 P.3d 480, 483 (Idaho App. 2009)

INSTRUCTION NO. _____

Carboxy-THC is a metabolite of marijuana. This means that the body has already processed the marijuana and it no longer has an intoxicating effect.

State v. Reisenauer, 145 Idaho 948, (Idaho 2008)

INSTRUCTION NO. _____

The failure of the defendant to testify does not create any presumption against him. A defendant has the absolute right not to testify, and the jury must not draw a presumption of guilt or any inference against the defendant because he did not testify. Moreover, a defendant in a criminal proceeding need not testify and the jury is not permitted to draw any inference from his failure to do so.

A juror would violate his oath of office if he would permit his judgment to be influenced by any inference he may draw from the defendant's failure to testify. Therefore this fact should not be discussed by you, or enter into your deliberation in any way.

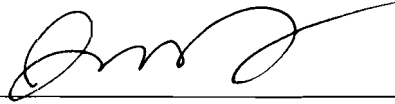
INSTRUCTION NO. _____

In considering the evidence in this case you must not place any emphasis on the fact that the defendant has not presented evidence (or witnesses) since the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The defendant may choose to rely on the state of the evidence and upon the failure, if any, of the State to prove every essential element of the charge against him, and no lack of testimony on the defendant's part will supply a failure of proof by the State so as to support by itself a finding against him on any such essential element.

CERTIFICATE OF DELIVERY

I hereby certify that on July 6, 2010 I hand-delivered a true and correct copy of the foregoing Defendant's Proposed Jury Instructions to Shelly Armstrong, Deputy Prosecuting Attorney, in court.

A handwritten signature in black ink, appearing to read 'D. Stewart', written over a horizontal line.

David A. Stewart, Attorney for Defendant

JUL 08 2010

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA
DANIEL J. AFARO, Clerk
By K. JOHNSON
DEPUTY

THE STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP JAMES MORGAN,

Defendant.

Case No. CR-FE-2010-0005111

SCHEDULING ORDER

This matter came before the court on Tuesday, July 6, 2010 for Pretrial Conference and with counsel's request to continue the trial the Court set this for Tuesday, September 14, 2010 at 01:30 PM for a Pretrial Conference and Wednesday, September 29, 2010 at 09:00 AM for a Jury Trial of the above named Defendant, PHILLIP JAMES MORGAN. The attorneys present were:

For the State: Shelley Armstrong

For the Defendant: David Alan Stewart

The Defendant entered a plea of not guilty and requested a jury trial. The court instructed the clerk to enter the plea of not guilty into the court minutes.

Pursuant to ICR 12 and ICR 18 the court hereby orders that the attorneys and Defendant shall comply with the following scheduling order:

- 1) **JURY TRIAL DATE:** The 2 day jury trial of this action shall commence before this court on **September 29, 2010**, at 9:00 a.m.
- 2) Notice is hereby given, pursuant to I.C.R. 25(a)(6) that an alternate judge may be assigned to preside over the trial of this case. The following is a list of potential alternate judges:

Hon. G. D. Carey
Hon. Dennis Goff
Hon. Daniel C. Hurlbutt, Jr.
Hon. James Judd
Hon. Peter McDermott
Hon. Duff McKee
Hon. Daniel Meehl
Hon. George R. Reinhart, III
Hon. W. H. Woodland

Hon. Linda Copple Trout
Hon. Kathryn A. Sticklen
Hon. Barry Wood

All Sitting Fourth District Judges


Unless a party has previously exercised their right to disqualification without cause under Rule 25(a)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than fourteen (14) days after service of this written notice listing the alternate judge.

- 3) **PRE-TRIAL CONFERENCE:** Counsel for the parties and the Defendant shall appear before this court on **September 14, 2010**, at 1:30 p.m. for the pre-trial conference. Counsel shall be prepared to discuss settlement possibilities pursuant to ICR 18. Failure of the Defendant to appear at this pre-trial conference will result in a forfeiture of bail and a bench warrant shall be issued by the court.

Each party shall be required to serve on all other parties and file with the Court a complete list of exhibits and witnesses in accordance with I.R.C.P. 16(h). Exhibit and witness lists shall also be submitted to the Court via email at kajohnson@adaweb.net.

- 4) **JURY INSTRUCTIONS:** The parties shall submit all proposed jury instructions to the court on or before the pre-trial conference. Requested instructions shall also be submitted to the Court via email at dclykema@adaweb.net. It is sufficient for the parties to identify unmodified pattern instructions by number.
- 5) **SANCTIONS:** Failure to comply with this order will subject a party or its attorney to appropriate sanctions, including but not limited to, costs, and reasonable attorney fees and jury costs. A party may be excused from strict compliance with any provisions of this Order only upon showing good cause.
- 6) **CONTINUANCES:** The court will not grant continuances unless good cause exists and all the parties waive their right to speedy trial.

DATED this 7th day of July, 2010.



GEORGE D. CAREY
Senior District Judge
For RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of July, 2010, I mailed (served) a true

and correct copy of the within instrument to:

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

DAVID STEWART
ATTORNEY AT LAW
950 W BANNOCK STREET, STE. 1100
BOISE ID 83702
MAILED

J. David Navarre
Clerk of the District Court

By [Signature]
Deputy Court Clerk

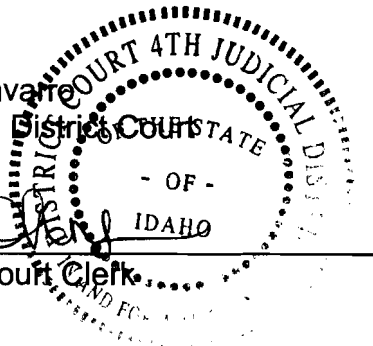


EXHIBIT LIST

The Plaintiff's are assigned 1 – 100 and the defendant's are assigned 500 -- 600. Please contact the clerk if additional numbers are needed, multiple parties are involved, or if there are other problems.

Richard D. Greenwood, DISTRICT JUDGE
Kathy Johnson, DEPUTY CLERK
Leslie Anderson, COURT REPORTER

CASE NO: **CR-FE-2010-0005111**

DATE(S):

STATE OF IDAHO

VS. PHILLIP JAMES MORGAN

Check for Plaintiff (s) List ✓

Check for Defendant (s) List ✓

(DO NOT USE AUTO-NUMBERING)

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT

Exhibit 1

IN THE FOURTH JUDICIAL DISTRICT COURT
ADA COUNTY, STATE OF IDAHO

JUL 09 2010

J. DAVID NAVARRO, Clerk
By K. JOHNSON
DEPUTY

STATE OF IDAHO,
Plaintiff,

-vs-

PHILLIP J. MORGAN,
Defendant.

CR-FE-2010-005111

PROPOSED
ORDER RE: CONDITION OF RELEASE

Assigned Judge: Judge Richard D. Greenwood

On July 6, 2010, a hearing was held where Defendant requested that the court modify the condition of release. Currently Defendant is required to wear a SCRAM device while out on bond. Defendant requested that this condition be modified to not require the SCRAM device but in lieu submit to weekly urine analysis due to the fact that the SCRAM device is very costly and urine analysis can accomplish the same result.

Based upon the foregoing, it is so Ordered that Defendant no longer be required to wear the SCRAM device but is required to submit to weekly urine analysis drug testing at the Idaho Drug Testing Laboratory, LLC, 600 S. Orchard Street, Boise, Idaho 83705. It is further ordered that the drug testing agency report any positive results to the Ada County Prosecuting Attorney's Office; facsimile number (208) 287-7709, and to this Court; facsimile number (208) 287-7529, within 24 hours of discovery of any positive result. Defendant is also to provide a current list of prescribed medications to the drug testing agency.

SO ORDERED this 9th day of July, 2010.


DISTRICT COURT JUDGE

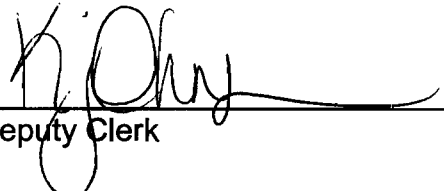
CERTIFICATE OF MAILING

I hereby certify that on the 9th day of July, 2010, I served a true and accurate photocopy of the foregoing document to the persons identified below by the method indicated:

Ada County Prosecuting Attorney
Interdepartmental Mail

David Stewart
Attorney at Law
950 W Bannock Street, Ste. 1100
Boise ID 83702
Mailed

J. David Navarro
Clerk of the District Court


Deputy Clerk

Session: Greenwood091410
Session Date: 2010/09/14
Judge: Greenwood, Richard
Reporter: Anderson, Leslie

Division: DC
Session Time: 08:35

Courtroom: CR508

Clerk(s):

Johnson, Kathy

State Attorney(s):

Armstrong, Shelley
Hemmer, Casey
Medema, Jonathan

Public Defender(s):

Rolfson, Eric
Simmons, Kimberly

Prob. Officer(s):

Court interpreter(s):

Case ID: 0008

Case number: ~~CRFB10-7408~~

Plaintiff:

Plaintiff Attorney:

Defendant: ~~Smith, Trevor~~

Additional audio and annotations can be found in case: 0009.

Co-Defendant(s):

Pers. Attorney: Stewart, David

State Attorney: Armstrong, Shelley

~~Public Defender: Simmons, Kimberly~~

CLFE10.5111

Phillip Morgan

2010/09/14

13:59:20 - Operator

Recording:

13:59:20 - New case

Smith, Trevor

13:59:32 - Judge: Greenwood, Richard

The Crt calls case deft present on bond with counsel.

14:00:46 - Pers. Attorney: Stewart, David

Has provided witness list and exhibit list.

14:02:21 - State Attorney: Armstrong, Shelley

Statement regarding the witnesses and exhibits.

14:03:13 - State Attorney: Armstrong, Shelley

Statement regarding CD and will have counsel review it before the trial.

14:05:02 - Operator

Stop recording:

The Court. Ready for trial

~~Case ID: 0009~~

~~Case number: CRFB10-7408~~

SEP 28 2010

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

GREG H. BOWER

Ada County Prosecuting Attorney

Shelley W. Armstrong

Deputy Prosecuting Attorney

200 West Front Street, Room 3191

Boise, ID 83702

Telephone: (208) 287-7700

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

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Defendant.

Case No. CR-FE-2010-0005111

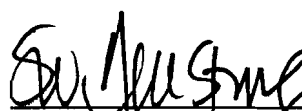
**ADDENDUM TO DISCOVERY
RESPONSE TO COURT**

Comes now, Shelley W. Armstrong, Deputy Prosecuting Attorney in and for Ada County, State of Idaho, and informs the Court that the State has submitted a(n) Addendum to Response to Discovery.

RESPECTFULLY SUBMITTED this 27th day of September 2010.

GREG H. BOWER

Ada County Prosecuting Attorney


By: Shelley W. Armstrong
Deputy Prosecuting Attorney

Session: Wood092910
Session Date: 2010/09/29
Judge: Wood, Barry
Reporter: Cromwell, Dianne

Division: DC
Session Time: 08:15

Courtroom: CR510

Clerk(s):
Ellis, Janet

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: CRFE10-00005111
Plaintiff: STATE OF IDAHO
Plaintiff Attorney:
Defendant: MORGAN, PHILLIP
Co-Defendant(s):
Pers. Attorney: STEWART, DAVID
State Attorney: ARMSTRONG, SHELLEY
Public Defender:

2010/09/29

09:39:36 - Operator
Recording:
09:39:36 - New case
MORGAN, PHILLIP
09:39:53 - Judge: Wood, Barry
Time set for jury trial.
09:40:32 - Judge: Wood, Barry
Defendant present on bond. Any issues prior to jury
09:40:43 - State Attorney: ARMSTRONG, SHELLEY
Have issue regarding scheduling.
09:45:01 - Operator
Stop recording:
10:14:42 - Operator
Recording:
10:14:42 - Record
MORGAN, PHILLIP
10:14:43 - Judge: Wood, Barry
The jury is present and seated
10:17:44 - Other: Call, Clerk did roll
10:17:58 - Judge: Wood, Barry
Court did introductory instruction
10:26:03 - Other: Pool, Clerk Swears Jury
10:26:05 - Judge: Wood, Barry
Court did voir dire of jury
10:39:31 - State Attorney: ARMSTRONG, SHELLEY

followup of juror #32
10:40:22 - Pers. Attorney: STEWART, DAVID
Move to excuse for cause juror #32
10:40:37 - Judge: Wood, Barry
The Court inquired further of juror #32
10:40:59 - Judge: Wood, Barry
The Court will excuse juror #32 for cause
10:42:17 - Judge: Wood, Barry
The Court cont'd voir dire
10:48:44 - Judge: Wood, Barry
Court excused juror #33 for cause
10:49:26 - Judge: Wood, Barry
The Court excused juror #47 for cause
10:50:07 - State Attorney: ARMSTRONG, SHELLEY
voir dire of #55
10:50:50 - Judge: Wood, Barry
Court excused juror #55
10:51:13 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong did voir dire of jury pool
10:55:29 - State Attorney: ARMSTRONG, SHELLEY
Move to excuse juror #43 for cause
10:55:42 - Judge: Wood, Barry
Court excused juror #43
10:55:53 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong continued voir dire
11:04:42 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong moved to excused juror #52 for cause
11:05:07 - Pers. Attorney: STEWART, DAVID
Mr. Stewart did followup of juror #52, no objection
11:05:30 - Judge: Wood, Barry
Court excused juror #52
11:05:38 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong cont'd voir dire
11:18:28 - State Attorney: ARMSTRONG, SHELLEY
Passed the panel for cause
11:18:38 - Pers. Attorney: STEWART, DAVID
Mr. Stewart did voir dire of jury panel
11:24:42 - Pers. Attorney: STEWART, DAVID
Pass panel for cause
11:24:49 - Judge: Wood, Barry
Counsel will exercise peremptory challenges between jurors 1
& 34
11:44:21 - Judge: Wood, Barry
The Court seats selected jury panel
11:45:56 - Other: Panel, Counsel agree with j
11:46:33 - Judge: Wood, Barry
Court excused remaining jurors
11:48:17 - Judge: Wood, Barry
Court will come back at 1:00 swear the jury and go into inst
ructing and
11:48:33 - Judge: Wood, Barry
openings
11:50:51 - Judge: Wood, Barry
Court inquired if any objections to the instructions
11:51:03 - State Attorney: ARMSTRONG, SHELLEY
Have no objection to pre proof instructions. Understands Mr
. Stewart has
11:51:22 - State Attorney: ARMSTRONG, SHELLEY

some post proof instructions
11:53:12 - Judge: Wood, Barry
Court will look those over during the break
11:53:27 - Operator
Stop recording:
13:10:08 - Operator
Recording:
13:10:08 - Record
MORGAN, PHILLIP
13:10:10 - Judge: Wood, Barry
The Court notes jury all back and ready to go. Inquired about prelim
13:10:44 - Judge: Wood, Barry
instructions. Found 4 instructions from defense. Inquired if there would be
13:11:07 - Judge: Wood, Barry
any lessor included instructions
13:11:16 - Pers. Attorney: STEWART, DAVID
Mr. Stewart responded. Blood test came back with THC
13:11:43 - Judge: Wood, Barry
The Court notes instruction submitted by Mr. Stewart based on
ff ST v
13:12:17 - Judge: Wood, Barry
REISENOWER
13:12:38 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong stated proof is not going to be that. Have pharmacologist to
13:12:59 - State Attorney: ARMSTRONG, SHELLEY
testify. Carboxy was found, but not approp. for instruction
13:13:38 - Pers. Attorney: STEWART, DAVID
It's a metabolite marijuana.
13:14:04 - Judge: Wood, Barry
The Court responded, something showing it is not an intoxicating substance
13:14:36 - State Attorney: ARMSTRONG, SHELLEY
Defendant admitted to smoking marij. and found substance on him.
13:15:03 - Judge: Wood, Barry
Proof in addition to the lab report
13:15:25 - Judge: Wood, Barry
The Court will have jury brought in.
13:16:05 - Judge: Wood, Barry
Inquired if any prelim. motions
13:16:12 - Pers. Attorney: STEWART, DAVID
stated there is not
13:16:50 - Other: Seated, Jury present and
13:17:20 - Judge: Wood, Barry
The Court inquired if roll of jury necessary Counsel waived roll call jury
13:18:03 - Other: Sworn, Jury panel
13:18:06 - Judge: Wood, Barry
The Court instructed on overview of the trial and pre proof instructions
13:33:25 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong made opening argument
13:38:35 - Pers. Attorney: STEWART, DAVID
Mr. Stewart made opening argument
13:42:21 - State Attorney: ARMSTRONG, SHELLEY

Ms. Armstrong would like to call SUSAN WILLIAMSON first, if she is here.

13:43:17 - State Attorney: ARMSTRONG, SHELLEY
States witness not here will call SEAN STACE/BCPD/SWORN and direct examined

14:03:03 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong cont'd to State's 1 & 2. Move to admit

14:03:39 - Pers. Attorney: STEWART, DAVID
no objection COURT ADMITTED STATE's 1 & 2

14:04:15 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong published States' 1 & 2

14:10:12 - Other: Defendant, Witness identified

14:10:17 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong continued

14:29:42 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong marked state's exhibit 7

14:42:00 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong cont'd to State's exhibit 3

14:42:51 - State Attorney: ARMSTRONG, SHELLEY
move to admit

14:43:01 - Judge: Wood, Barry
Court admits state's exhibit 3.

14:43:21 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong published

14:48:43 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong marked State's exhibit 8 for refreshment of of ficer's memory

14:51:55 - Pers. Attorney: STEWART, DAVID
Mr. Stewart did cross examination

15:00:25 - Pers. Attorney: STEWART, DAVID
Mr. Stewart cont'd to defendant's exhibit B

15:01:27 - Judge: Wood, Barry
Court admits defendant's exhibit B.

15:01:46 - Pers. Attorney: STEWART, DAVID
Publish to jury

15:03:21 - Pers. Attorney: STEWART, DAVID
Cont'd cross examination

15:12:57 - Other: Excused, Witness
subject to recall

15:14:12 - Operator
Stop recording: (On Recess)

15:14:52 - Operator
Recording:

15:14:52 - Record
MORGAN, PHILLIP

15:14:58 - Judge: Wood, Barry
Inquired about schedule

15:15:22 - State Attorney: ARMSTRONG, SHELLEY
would like to get evidence done today. Closings in the morn ing

15:15:58 - Operator
Stop recording: (On Recess)

15:34:26 - Operator
Recording:

15:34:26 - Record
MORGAN, PHILLIP

15:34:33 - Other: Seated, Jury present and

15:34:54 - State Attorney: ARMSTRONG, SHELLEY

Ms. Armstrong called SUSAN WILLIAMSON/SWORN and direct examined. Forensic

15:35:46 - State Attorney: ARMSTRONG, SHELLEY
Scientist III from ID STATE POLICE IN POCA TELLO

15:40:27 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong cont'd to State's exhibit 6

15:52:51 - Pers. Attorney: STEWART, DAVID
Mr. Stewart did cross examination

15:56:20 - Other: Excused, Witness

15:56:24 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong called LARRY MOORE/BCPD/SWORN AND DIRECT EXAMINED

16:06:37 - Other: Defendant, Witness identified

16:06:39 - State Attorney: ARMSTRONG, SHELLEY
Ms. Armstrong cont'd to State's exhibit 6

16:25:23 - Pers. Attorney: STEWART, DAVID
Mr. Stewart did cross examination

16:32:55 - State Attorney: ARMSTRONG, SHELLEY
redirect

16:33:00 - Pers. Attorney: STEWART, DAVID
recross

16:33:20 - Other: Excused, Witness

16:34:35 - Judge: Wood, Barry
The Court gives further admonishment

16:35:55 - Pers. Attorney: STEWART, DAVID
Notes have Defendant's exhibit A by stipulation of State would like to admit

16:36:16 - Judge: Wood, Barry
Court admits Exhibit A.

16:36:23 - Judge: Wood, Barry
Jury admonished and excused for the evening.

16:36:48 - Operator
Stop recording:

Session: Wood093010
Session Date: 2010/09/30
Judge: Wood, Barry
Reporter: Cromwell, Dianne

Division: DC
Session Time: 08:04

Courtroom: CR510

Clerk(s):
Ellis, Janet

State Attorney(s):
Armstrong, Shelley

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case number: CRFE10-0005111
Plaintiff: STATE OF IDAHO
Plaintiff Attorney:
Defendant: MORGAN, PHILLIP
Co-Defendant(s):
Pers. Attorney: STEWART, DAVID
State Attorney: Armstrong, Shelley
Public Defender:

2010/09/30

09:10:42 - Operator
Recording:
09:10:42 - New case
MORGAN, PHILLIP
09:10:54 - Judge: Wood, Barry
Day two jury trial. Court and counsel go over proposed jury instructions.
09:11:17 - Judge: Wood, Barry
Court understands no lessor included. Court notes instructions 1-10 already
09:12:53 - Judge: Wood, Barry
read to jury. Starting with instruction #11
09:13:08 - State Attorney: Armstrong, Shelley
Has no objection to the instructions or verdict form
09:13:21 - Pers. Attorney: STEWART, DAVID
Mr. Stewart stated have no objection to Court's instructions would like to
09:13:37 - Pers. Attorney: STEWART, DAVID
modify one of defendant's instructions and drop the other 3 defendant was
09:13:54 - Pers. Attorney: STEWART, DAVID
asking for
09:13:58 - State Attorney: Armstrong, Shelley
Ms. Armstrong objected
09:14:48 - Judge: Wood, Barry
The Court inquired
09:14:58 - State Attorney: Armstrong, Shelley
Ms. Armstrong argues carboxy shows the marij in the system. Blood test taken

000083

09:15:22 - State Attorney: Armstrong, Shelley
2 hrs after stop
09:15:31 - Judge: Wood, Barry
The Court will wait to hear from pharmacologist.
09:15:56 - Judge: Wood, Barry
Inquired further of Mr. Stewart.
09:16:24 - Pers. Attorney: STEWART, DAVID
Want it to stated its not an intoxicating substance.
09:16:55 - Judge: Wood, Barry
Court will wait to hear from the last witness before considering further
09:17:17 - Judge: Wood, Barry
changes.
09:17:34 - Pers. Attorney: STEWART, DAVID
Mr. Stewart responded
09:17:55 - State Attorney: Armstrong, Shelley
Ms. Armstrong responded
09:18:43 - Judge: Wood, Barry
Court to flip side of State's argument
09:19:02 - State Attorney: Armstrong, Shelley
Defense wants Court to instruct on a case. Don't see the necessity.
09:19:57 - Judge: Wood, Barry
The Court responded
09:20:07 - State Attorney: Armstrong, Shelley
Ms. Armstrong responded.
09:21:45 - Judge: Wood, Barry
The Court will wait to hear the witness, right now State charges under
09:22:21 - Judge: Wood, Barry
influence of alcohol or intoxicating substance. Defendant blew .06/.07 and
09:23:01 - Judge: Wood, Barry
evidence shows carboxin, not an intoxicating substance.
09:23:23 - State Attorney: Armstrong, Shelley
Would move to amend information
09:24:16 - Judge: Wood, Barry
Court will consider further
09:24:29 - Operator
Stop recording:
09:53:59 - Operator
Recording:
09:53:59 - Record
MORGAN, PHILLIP
09:54:14 - Judge: Wood, Barry
The Court back on the record.
09:54:58 - Judge: Wood, Barry
The Court notes if we get to info pt II and jury waived, would still be a
09:55:12 - Judge: Wood, Barry
court trial.
09:55:16 - Pers. Attorney: STEWART, DAVID
Understands
09:55:56 - Other: Seated, The jury present and
09:56:59 - Other: Jury, Counsel waive roll c
09:57:01 - State Attorney: Armstrong, Shelley
Ms. Armstrong called Dr. GARY DAWSON/SWORN and direct examined
10:49:11 - Pers. Attorney: STEWART, DAVID
request short recess
10:49:24 - Judge: Wood, Barry
jury excused
10:49:33 - Operator
Stop recording: (On Recess)

11:00:30 - Operator
Recording:
11:00:30 - Record
MORGAN, PHILLIP
11:01:22 - Operator
Stop recording:
11:01:33 - Operator
Recording:
11:01:33 - Record
MORGAN, PHILLIP
11:01:41 - Other: Seated, Jury present and
11:02:00 - Pers. Attorney: STEWART, DAVID
Mr. Stewart cross examination
11:20:38 - State Attorney: Armstrong, Shelley
Issue outside jury
11:21:34 - State Attorney: Armstrong, Shelley
Ms. Armstrong takes up issue outside jury
11:22:20 - Pers. Attorney: STEWART, DAVID
objects, speculative
11:22:45 - Judge: Wood, Barry
The Court responded re: prescription dosage on the pill bottle. Defense
11:23:19 - Judge: Wood, Barry
counsel showed bottle to witness, bottle shows 3 x's per day, does not mean
11:23:42 - Judge: Wood, Barry
he did take
11:23:49 - Pers. Attorney: STEWART, DAVID
foundation
11:23:54 - Judge: Wood, Barry
The Court responded
11:24:13 - Pers. Attorney: STEWART, DAVID
Bottle not in evidence.
11:24:31 - State Attorney: Armstrong, Shelley
Was only going to ask just about prescription dosage.
11:25:44 - Other: Seated, Jury present and
11:26:11 - State Attorney: Armstrong, Shelley
Ms. Armstrong redirect examination of witness
11:27:12 - Other: Excused, Witness
11:27:22 - State Attorney: Armstrong, Shelley
Ms. Armstrong - State rests
11:27:55 - Operator
Stop recording: (On Recess)
11:47:39 - Operator
Recording:
11:47:39 - Record
MORGAN, PHILLIP
11:47:41 - Judge: Wood, Barry
The Court back on record outside the jury. Inquired of defense counsel.
11:48:04 - Pers. Attorney: STEWART, DAVID
Spoke with defendant.
11:48:16 - Judge: Wood, Barry
Defendant will not testify. Court inquired
11:48:48 - Defendant: MORGAN, PHILLIP
SWORN
11:48:52 - Judge: Wood, Barry
The Court inquired of defendant, if understands his rights.
11:50:41 - Defendant: MORGAN, PHILLIP
Understands his right not to testify
11:54:11 - Other: Seated, Jury present and

11:54:16 - Pers. Attorney: STEWART, DAVID
Defendant rests
11:54:28 - Judge: Wood, Barry
The Court will break for jury to have lunch then come back for closing
11:54:55 - Judge: Wood, Barry
arguments
11:55:09 - Judge: Wood, Barry
Jury admonished.
11:55:54 - Operator
Stop recording:
13:15:00 - Operator
Recording:
13:15:00 - Record
MORGAN, PHILLIP
13:15:02 - Judge: Wood, Barry
Court back on the record outside the jury
13:16:29 - Judge: Wood, Barry
Inquired of counsel regarding jurors having copies of jury instructions for
13:16:47 - Judge: Wood, Barry
deliberations.
13:16:55 - Pers. Attorney: STEWART, DAVID
would like them to have copy
13:17:02 - Judge: Wood, Barry
Court will have copies made for deliberations
13:17:13 - Other: Seated, Jury present and
13:17:27 - Judge: Wood, Barry
The Court formally instructs jury
13:29:53 - State Attorney: Armstrong, Shelley
Ms. Armstrong made closing arguments
13:46:50 - Pers. Attorney: STEWART, DAVID
Mr. Stewart made closing argument
13:53:41 - State Attorney: Armstrong, Shelley
State's final closing
13:57:08 - Other: Chose, Alternate
Juror #19
13:58:27 - Other: Bailiff, Clerk swears
for deliberations
13:59:32 - Other: Excused, Jury
13:59:47 - Operator
Stop recording:
15:06:28 - Operator
Recording:
15:06:28 - Record
MORGAN, PHILLIP
15:06:32 - Judge: Wood, Barry
The Court stated have a verdict. Before bringing in the jury, and if there
15:06:55 - Judge: Wood, Barry
is a guilty verdict, understand that defendant will waive the jury for the
15:07:19 - Judge: Wood, Barry
part II of the trial
15:07:34 - Defendant: MORGAN, PHILLIP
Understands, will waive the jury for part II
15:09:10 - Other: Seated, Jury present and
15:09:18 - Judge: Wood, Barry
Court inquired of jury re: verdict
15:09:55 - Other: Verdict, Jury foreman tenders
to bailiff
15:10:03 - Judge: Wood, Barry

Court viewed
15:10:13 - Other: Verdict, Clerk reads
Guilty verdict
15:10:57 - Judge: Wood, Barry
Court polls the verdict
15:11:55 - Judge: Wood, Barry
Jurors polled, each affirms verdict
15:12:11 - Judge: Wood, Barry
The Court thanks jury excuses them from service.
15:14:23 - Judge: Wood, Barry
The Court goes to part II of trial.
15:15:00 - State Attorney: Armstrong, Shelley
Ms. Armstrong presents exhibits 9 _10 of prior JOC's
15:15:59 - Pers. Attorney: STEWART, DAVID
no objection to Judgments
15:16:05 - Judge: Wood, Barry
Court admits 9 _10
15:16:12 - State Attorney: Armstrong, Shelley
State rests
15:16:18 - Pers. Attorney: STEWART, DAVID
No evidence
15:16:37 - Judge: Wood, Barry
Court viewed State's 9 _10
15:19:31 - Judge: Wood, Barry
Court states appears this is defendant's third DUI. No evidence in
15:19:51 - Judge: Wood, Barry
contrary. Guilty of the Felony. Court will order PSI and set for sentencing
15:21:35 - Judge: Wood, Barry
on November 16, 2010 @ 2:30 p.m. before Judge Greenwood. Court will order
15:21:59 - Judge: Wood, Barry
sub. abuse evaluation.
15:22:31 - Pers. Attorney: STEWART, DAVID
Defendant has abided by the conditions of bond
15:22:45 - State Attorney: Armstrong, Shelley
Would request Court remand defendant. Defendant is not employed.
15:24:15 - Pers. Attorney: STEWART, DAVID
Requested Court not revoke bond. Defendant has been compliant. Has fiance
15:24:31 - Pers. Attorney: STEWART, DAVID
here and infant child. Fiance is employed. Defendant has eval set for St.
15:24:55 - Pers. Attorney: STEWART, DAVID
Al's tomorrow.
15:25:02 - State Attorney: Armstrong, Shelley
Further criminal record stated.
15:31:20 - Operator
Stop recording:

000087

IN THE FOURTH JUDICIAL DISTRICT COURT
ADA COUNTY, STATE OF IDAHO

SEP 30 2010
J. DAVID MORGAN, Clerk
By: _____

STATE OF IDAHO,)	
Plaintiff,	)	CR-FE-2010-5111
)	
Vs.	)	ORDER GRANTING FURLOUGH
)	
PHILLIP JAMES MORGAN,)	
Defendant.)	
_____)	

Finding that Defendant, Phillip J. Morgan, is in need of psychological evaluation and has one scheduled for October 1, 2010 at 9:00 a.m. in the morning at the St. Alphonsus Hospital in Boise, Idaho, it is so ordered that Defendant be granted a furlough to submit to the psychological evaluation. It is ordered that Defendant be released at least 30 minutes before 9:00 a.m. to allow enough time to get to the hospital. Also it is ordered that Defendant promptly return to the Ada County Jail once the evaluation is completed.

SO ORDER THIS 30th day of September, 2010.

BY THE COURT:



DISTRICT COURT JUDGE

cc: ACT/PA/Stewart 9/30/10 [signature]

000088

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

NO. _____
A.M. _____ FILED P.M. 3:35

SEP 30 2010

J. DAVID NAVARRO, Clerk
By JANET L. ELLIS
DEPUTY

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
PHILLIP JAMES MORGAN,)
)
Defendant.)
_____)

Case No. CRFE100005111

VERDICT

As to the offense of OPERATING A MOTOR VEHICLE WHILE UNDER THE
INFLUENCE OF ALCOHOL, we, the jury, unanimously find the defendant, PHILLIP JAMES
MORGAN:

NOT GUILTY _____

GUILTY X

Sept 30, 2010
DATE

Katherine Evans
PRESIDING JUROR

INSTRUCTION NO. 1

This is the case of State of Idaho v. PHILLIP JAMES MORGAN. Are the parties ready to proceed?

In a moment the Clerk will call the roll of the jury. When your name is called you will also be identified with a number. Please remember your number as we will be using it later in the jury selection process.

The Clerk will now call the roll of the jury.

Ladies and Gentlemen, you have been summoned as prospective jurors in the lawsuit now before us. The first thing we do in a trial is to select 12 jurors and one alternate juror from among you.

I am Barry Wood, the judge in charge of the courtroom and this trial. The deputy clerk of court, marks the trial exhibits and administers oaths to you jurors and to the witnesses. The bailiff will assist me in maintaining courtroom order and working with the jury. The Court reporter, will keep a verbatim account of all matters of record during the trial.

Each of you is qualified to serve as a juror of this court. This call upon your time does not frequently come to you, but is part of your obligation for your citizenship in this state and country. No one should avoid fulfilling this obligation except under the most pressing circumstances. Service on a jury is a civic and patriotic obligation which all good citizens should perform.

Service on a jury affords you an opportunity to be a part of the judicial process, by which the legal affairs and liberties of your fellow men and women are determined and protected under our form of government. You are being asked to perform one of the highest duties of citizenship, that is, to sit in judgment on facts which will determine the guilt or innocence of persons charged with a crime.

To assist you with the process of selection of a jury, I will introduce you to the parties and their lawyers and tell you in summary what this action is about. When I introduce an individual would you please stand and briefly face the jury panel and then retake your seat.

The state of Idaho is the plaintiff in this action. The lawyer representing the state is Shelly Armstrong, a member of the county prosecuting attorney's staff.

The defendant in this action is PHILLIP JAMES MORGAN. The lawyer representing the defendant is David Stewart.

I will now read you the pertinent portion of the Information which sets forth the charges against the defendant. The Information is not to be considered as evidence but is a mere formal charge against the defendant. You must not consider it as evidence of guilt and you must not be influenced by the fact that a charge has been filed.

The Information that the Defendant, PHILLIP JAMES MORGAN on or about the 12th day of March, 2010, in the County of Ada, State of Idaho, did drive a motor vehicle, to-wit: a maroon 2002 Chevrolet Blazer, on or near the intersection of Taft Street and Sycamore Drive, while under the influence of alcohol and/or an intoxicating substance.

To this charge Mr. Morgan has pled not guilty.

Under our law and system of justice, every defendant is presumed to be innocent. This means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove [his] [her] innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

As the judge in charge of this courtroom, it is my duty, at various times during the course of this trial, to instruct you as to the law that applies to this case.

The duty of the jury is to determine the facts; to apply the law set forth in the instructions to those facts, and in this way to decide the case. In applying the Court's instructions as to the controlling law, you must follow those instructions regardless of your opinion of what the law is or what the law should be, or what any lawyer may state the law to be.

During the course of this trial, including the jury selection process, you are instructed that you are not to discuss this case among yourselves or with anyone else, nor to form any opinion as to the merits of the case until after the case has been submitted to you for your determination.

We will now call an initial selection of _____ jurors. As your name is called please take a seat as directed by the bailiff. The clerk will please draw the initial jurors' names.

* * * * The clerk calls the jurors * * * *

In this part of the jury selection, you will be asked questions touching on your qualifications to serve as jurors in this particular case. This part of the case is known as the voir dire examination.

Voir dire examination is for the purpose of determining if your decision in this case would in any way be influenced by opinions which you now hold or by some personal experience or special knowledge which you may have concerning the subject matter to be tried. The object is to obtain twelve persons who will impartially try the issues of this case upon the evidence presented in this courtroom without being influenced by any other factors.

Please understand that this questioning is not for the purpose of prying into your affairs for personal reasons but is only for the purpose of obtaining an impartial jury.

Each question has an important bearing upon your qualifications as a juror and each question is based upon a requirement of the law with respect to such qualifications. Each question is asked each of you, as though each of you were being questioned separately.

If your answer to any question is yes, please raise your hand. You will then be asked to identify yourself both by name and juror number.

At this time I would instruct both sides to avoid repeating any question during this voir dire process which has already been asked. I would ask counsel to note, however, that you certainly have the right to ask follow-up questions of any individual juror based upon that juror's response to any previous question.

The jury should be aware that during and following the voir dire examination one or more of you may be challenged.

Each side has a certain number of "peremptory challenges", by which I mean each side can challenge a juror and ask that he or she be excused without giving a reason therefor. In addition each side has challenges "for cause", by which I mean that each side can ask that a juror be excused for a specific reason. If you are excused by either side please do not feel offended or feel that your honesty or integrity is being questioned. It is not.

The clerk will now swear the entire jury panel for the voir dire examination.

INSTRUCTION NO. 2

Now that you have been sworn as jurors to try this case, I want to go over with you what will be happening. I will describe how the trial will be conducted and what we will be doing. At the end of the trial, I will give you more detailed guidance on how you are to reach your decision.

Because the state has the burden of proof, it goes first. After the state's opening statement, the defense may make an opening statement, or may wait until the state has presented its case.

The state will offer evidence that it says will support the charge(s) against the defendant. The defense may then present evidence, but is not required to do so. If the defense does present evidence, the state may then present rebuttal evidence. This is evidence offered to answer the defense's evidence.

After you have heard all the evidence, I will give you additional instructions on the law. After you have heard the instructions, the state and the defense will each be given time for closing arguments. In their closing arguments, they will summarize the evidence to help you understand how it relates to the law. Just as the opening statements are not evidence, neither are the closing arguments. After the closing arguments, you will leave the courtroom together to make your decision. During your deliberations, you will have with you my instructions, the exhibits admitted into evidence and any notes taken by you in court.

INSTRUCTION NO. 3

The defendant, PHILLIP JAMES MORGAN, is here upon trial on an Information filed in this court charging the defendant with the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL.

The charging part of the Information reads as follows:

That the Defendant, PHILLIP JAMES MORGAN on or about the 12th day of March, 2010, in the County of Ada, State of Idaho, did drive a motor vehicle, to-wit: a maroon 2002 Chevrolet Blazer, on or near the intersection of Taft Street and Sycamore Drive, while under the influence of alcohol and/or an intoxicating substance.

The defendant has previously entered a plea of "Not Guilty" to the charges set forth in the Information.

INSTRUCTION NO. 4

Under our law and system of justice, the defendant is presumed to be innocent. The presumption of innocence means two things.

First, the state has the burden of proving the defendant guilty. The state has that burden throughout the trial. The defendant is never required to prove [his] [her] innocence, nor does the defendant ever have to produce any evidence at all.

Second, the state must prove the alleged crime beyond a reasonable doubt. A reasonable doubt is not a mere possible or imaginary doubt. It is a doubt based on reason and common sense. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence. If after considering all the evidence you have a reasonable doubt about the defendant's guilt, you must find the defendant not guilty.

INSTRUCTION NO. 5

Your duties are to determine the facts, to apply the law set forth in my instructions to those facts, and in this way to decide the case. In so doing, you must follow my instructions regardless of your own opinion of what the law is or should be, or what either side may state the law to be. You must consider them as a whole, not picking out one and disregarding others. The order in which the instructions are given has no significance as to their relative importance. The law requires that your decision be made solely upon the evidence before you. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. The production of evidence in court is governed by rules of law. At times during the trial, an objection may be made to a question asked a witness, or to a witness' answer, or to an exhibit. This simply means that I am being asked to decide a particular rule of law. Arguments on the admissibility of evidence are designed to aid the Court and are not to be considered by you nor affect your deliberations. If I sustain an objection to a question or to an exhibit, the witness may not answer the question or the exhibit may not be considered. Do not attempt to guess what the answer might have been or what the exhibit might have shown. Similarly, if I tell you not to consider a particular statement or exhibit you should put it out of your mind, and not refer to it or rely on it in your later deliberations.

During the trial I may have to talk with the parties about the rules of law which should apply in this case. Sometimes we will talk here at the bench. At other times I will excuse you from the courtroom so that you can be comfortable while we work out any problems. You are not to speculate about any such discussions. They are necessary from time to time and help the trial run more smoothly.

Some of you have probably heard the terms “circumstantial evidence,” “direct evidence” and “hearsay evidence.” Do not be concerned with these terms. You are to consider all the evidence admitted in this trial.

However, the law does not require you to believe all the evidence. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it.

There is no magical formula by which one may evaluate testimony. You bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs you determine for yourselves whom you believe, what you believe, and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In deciding what you believe, do not make your decision simply because more witnesses may have testified one way than the other. Your role is to think about the testimony of each witness you heard and decide how much you believe of what the witness had to say.

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 6

During the course of this trial, [including the jury selection process,] you are instructed that you are not to discuss this case among yourselves or with anyone else, including any use of email, text messaging, tweeting, blogging, electronic bulletin boards, or any other form of communication, electronic or otherwise. Do not conduct any personal investigation or look up any information from any source, including the Internet. Do not form an opinion as to the merits of the case until after the case has been submitted to you for your determination.

INSTRUCTION NO. 7

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

I may at times use the word "victim" in these instructions or in the course of this trial. This word is used only to refer to a person or persons who are alleged to have been victimized, and is used only for convenience. It does not indicate any opinion on my part that a person is a victim, or that the defendant has committed an offense. Whether a person is a victim, and whether the defendant is guilty of any offense, are matters for you alone to determine based on the evidence presented at trial.

INSTRUCTION NO. 8

Do not concern yourself with the subject of penalty or punishment. That subject must not in any way affect your verdict. If you find the defendant guilty, it will be my duty to determine the appropriate penalty or punishment.

INSTRUCTION NO. 9

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room.

If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

INSTRUCTION NO. 10

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

Do not discuss this case during the trial with anyone, including any of the attorneys, parties, witnesses, your friends, or members of your family. "No discussion" also means no emailing, text messaging, tweeting, blogging, posting to electronic bulletin boards, and any other form of communication, electronic or otherwise.

Do not discuss this case with other jurors until you begin your deliberations at the end of the trial. Do not attempt to decide the case until you begin your deliberations.

I will give you some form of this instruction every time we take a break. I do that not to insult you or because I don't think you are paying attention, but because experience has shown this is one of the hardest instructions for jurors to follow. I know of no other situation in our culture where we ask strangers to sit together watching and listening to something, then go into a little room together and not talk about the one thing they have in common: what they just watched together.

There are at least two reasons for this rule. The first is to help you keep an open mind. When you talk about things, you start to make decisions about them and it is extremely important that you not make any decisions about this case until you have heard all the evidence and all the rules for making your decisions, and you won't have that until the very end of the trial. The second reason for the rule is that we want all of you working together on this decision when you deliberate. If you have conversations in groups of two or three during the trial, you won't remember to repeat all of your thoughts and observations for the rest of your fellow jurors when you deliberate at the end of the trial.

Ignore any attempted improper communication. If any person tries to talk to you about this case, tell that person that you cannot discuss the case because you are a juror. If that person persists, simply walk away and report the incident to the bailiff.

Do not make any independent personal investigations into any facts or locations connected with this case. **Do not** look up any information from any source, including the Internet. **Do not** communicate any private or special knowledge about any of the facts of this case to your fellow jurors. **Do not** read or listen to any news reports about this case or about anyone involved in this case, whether those reports are in newspapers or the Internet, or on radio or television.

In our daily lives we may be used to looking for information on-line and to “Google” something as a matter of routine. Also, in a trial it can be very tempting for jurors to do their own research to make sure they are making the correct decision. You must resist that temptation for our system of justice to work as it should. I specifically instruct that you must decide the case only on the evidence received here in court. If you communicate with anyone about the case or do outside research during the trial it could cause us to have to start the trial over with new jurors and you could be held in contempt of court.

While you are actually deliberating in the jury room, the bailiff will confiscate all cell phones and other means of electronic communications. Should you need to communicate with me or anyone else during the deliberations, please notify the bailiff.

INSTRUCTION NO.

11

You have now heard all the evidence in the case. My duty is to instruct you as to the law.

You must follow all the rules as I explain them to you. You may not follow some and ignore others. Even if you disagree or don't understand the reasons for some of the rules, you are bound to follow them. If anyone states a rule of law different from any I tell you, it is my instruction that you must follow.

INSTRUCTION NO. 12

As members of the jury it is your duty to decide what the facts are and to apply those facts to the law that I have given you. You are to decide the facts from all the evidence presented in the case.

The evidence you are to consider consists of:

1. sworn testimony of witnesses;
2. exhibits which have been admitted into evidence; and
3. any facts to which the parties have stipulated.

Certain things you have heard or seen are not evidence, including:

1. arguments and statements by lawyers. The lawyers are not witnesses. What they say in their opening statements, closing arguments and at other times is included to help you interpret the evidence, but is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, follow your memory;
2. testimony that has been excluded or stricken, or which you have been instructed to disregard;
3. anything you may have seen or heard when the court was not in session.

INSTRUCTION NO. 12 B

In every crime or public offense there must exist a union or joint operation of act and intent.

INSTRUCTION NO. 12C

A witness who has special knowledge in a particular matter may give an opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for the opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

INSTRUCTION NO. 12 D

A defendant in a criminal trial has a constitutional right not to be compelled to testify. The decision whether to testify is left to the defendant, acting with the advice and assistance of the defendant's lawyer. You must not draw any inference of guilt from the fact that the defendant does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 13

In order for the defendant to be guilty of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL the State must prove each of the following:

1. On or about the 12th day of March, 2010;
2. in the State of Idaho;
3. the defendant PHILLIP JAMES MORGAN drove;
4. a motor vehicle;
5. upon a highway, street or bridge or upon public or private property open to the public;
6. while under the influence of alcohol and/or an intoxicating substance.

If any of the above has not been proven beyond a reasonable doubt, you must find the defendant not guilty. If each of the above has been proven beyond a reasonable doubt, then you must find the defendant guilty.

INSTRUCTION NO. 14

To prove that someone was under the influence of alcohol and/or any intoxicating substance, it is not necessary that any particular degree or state of intoxication be shown. Rather, the state must show that the defendant had consumed sufficient alcohol and/or had used enough of any drug or intoxicating substances to influence or affect the defendant's ability to drive the motor vehicle.

INSTRUCTION NO. 15

It is not a defense to the charge of Operating a Motor Vehicle Under the Influence of any drug or a combination of alcohol and any drug that the person charged is or has been entitled to use such drug under the laws of this state.

INSTRUCTION NO. 16

It is alleged that the crime charged was committed “on or about” a certain date. If you find the crime was committed, the proof need not show that it was committed on that precise date.

INSTRUCTION NO. 17

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

The attitude and conduct of jurors at the beginning of your deliberations are important. It is rarely productive at the outset for you to make an emphatic expression of your opinion on the case or to state how you intend to vote. When you do that at the beginning, your sense of pride may be aroused, and you may hesitate to change your position even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

As jurors you have a duty to consult with one another and to deliberate before making your individual decisions. You may fully and fairly discuss among yourselves all of the evidence you have seen and heard in this courtroom about this case, together with the law that relates to this case as contained in these instructions.

During your deliberations, you each have a right to re-examine your own views and change your opinion. You should only do so if you are convinced by fair and honest discussion that your original opinion was incorrect based upon the evidence the jury saw and heard during the trial and the law as given you in these instructions.

Consult with one another. Consider each other's views, and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of

you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

However, none of you should surrender your honest opinion as to the weight or effect of evidence or as to the innocence or guilt of the defendant because the majority of the jury feels otherwise or for the purpose of returning a unanimous verdict.

INSTRUCTION NO. 18

You have been instructed as to all the rules of law that may be necessary for you to reach a verdict. Whether some of the instructions will apply depend upon your determination of the facts. You will disregard any instruction which applies to a state of facts which you determine does not exist. You must not conclude from the fact that an instruction has been given that the Court is expressing any opinion as to the facts.

INSTRUCTION NO. 19

The original instructions and the exhibits will be with you in the jury room. They are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be a gap in the numbering of the instructions. If there is, you should not concern yourselves about such gap.

INSTRUCTION NO. 20

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the bailiff. You should not try to communicate with me by any means other than such a note.

During your deliberations, you are not to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

INSTRUCTION NO. 21

Upon retiring to the jury room, select one of you as a presiding officer, who will preside over your deliberations. It is that person's duty to see that discussion is orderly; that the issues submitted for your decision are fully and fairly discussed; and that every juror has a chance to express himself or herself upon each question.

In this case, your verdict must be unanimous. When you all arrive at a verdict, the presiding juror will sign it and you will return it into open court.

Your verdict in this case cannot be arrived at by chance, by lot, or by compromise.

If, after considering all of the instructions in their entirety, and after having fully discussed the evidence before you, the jury determines that it is necessary to communicate with me, you may send a note by the bailiff. You are not to reveal to me or anyone else how the jury stands until you have reached a verdict or unless you are instructed by me to do so.

A verdict form suitable to any conclusion you may reach will be submitted to you with these instructions.

DATED This 30 day of September, 2010.


BARRY WOOD
District Judge

INSTRUCTION NO. _____

You have now completed your duties as jurors in this case and are discharged with the sincere thanks of this Court. The question may arise as to whether you may discuss this case with the attorneys or with anyone else. For your guidance, the Court instructs you that whether you talk to the attorneys, or to anyone else, is entirely your own decision. It is proper for you to discuss this case, if you wish to, but you are not required to do so, and you may choose not to discuss the case with anyone at all. If you choose to, you may tell them as much or as little as you like, but you should be careful to respect the privacy and feelings of your fellow jurors. Remember that they understood their deliberations to be confidential. Therefore, you should limit your comments to your own perceptions and feelings. If anyone persists in discussing the case over your objection, or becomes critical of your service, either before or after any discussion has begun, please report it to me.

INSTRUCTION NO. _____

In the past, it has been my practice to meet with jurors following a case to answer any questions you might have to which it was appropriate for me to respond. Upon request, I have allowed counsel for both parties to be present. However, the Idaho Supreme Court on July 22, 2005, adopted the following language in an opinion which addressed this practice:

“To the extent there is a practice of trial judges engaging jurors in a dialogue of questions and answers following a verdict, but before post trial matters, including sentencing, are heard and decided, it is improper. It is no different than any other ex parte contact that may influence the outcome of a proceeding. After a verdict is taken the judge may thank the jury members for their service and address those issues of accommodating the jury members’ convenience. Otherwise, the door between the bench and the jury is closed so long as the case is pending, only to be opened in a proper proceeding.”

This court and all officers of the court are required to obey the orders of the Supreme Court. I will thus be unable to meet with you as per the Idaho Supreme Court’s directive to all trial judges in this state.

Session: Greenwood111610b
Session Date: 2010/11/16
Judge: Greenwood, Richard
Reporter: Gambee, Susan

Division: DC
Session Time: 11:29

Courtroom: CR508

Clerk(s):
Johnson, Kathy

State Attorney(s):
Armstrong, Shelley
Dinger, John

Public Defender(s):
Cahill, August
Rolfson, Eric

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case number: CRFE10.5111
Plaintiff:
Plaintiff Attorney:
Defendant: Morgan, Phillip
Co-Defendant(s):
Pers. Attorney: Stewart, David
State Attorney: Armstrong, Shelley
Public Defender: Cahill, August

2010/11/16

14:30:39 - Operator
Recording:
14:30:39 - New case
Morgan, Phillip
14:30:47 - Judge: Greenwood, Richard
The Crt calls case deft present in custody with counsel.
14:31:24 - Judge: Greenwood, Richard
The Crt reviews the file.
14:33:27 - Judge: Greenwood, Richard
All parties have received and have had adequate time to review the materials.
14:33:52 - State Attorney: Armstrong, Shelley
No corrections.
14:34:06 - Pers. Attorney: Stewart, David
States corrections.
14:35:39 - Judge: Greenwood, Richard
No testimony or statements.
14:35:45 - State Attorney: Armstrong, Shelley
Argument on recommendations.
14:35:52 - General:
Time stamp
14:35:52 - General:

000123

Time stamp

14:35:54 - State Attorney: Armstrong, Shelley
2 + 8 = 10 yrs to the CAPP program or probation.
14:49:41 - State Attorney: Armstrong, Shelley
Will not be requesting restitution.
14:49:49 - Pers. Attorney: Stewart, David
Argument on recommendations.
14:53:24 - Judge: Greenwood, Richard
14:53:28 - Pers. Attorney: Stewart, David
That the debt be placed on probation.
15:02:22 - Pers. Attorney: Stewart, David
Intensive outpatient treatment.
15:02:30 - Judge: Greenwood, Richard
No legal cause shown.
15:03:03 - Judge: Greenwood, Richard
Addresses counsel regarding the case number is incorrect on the PSI
15:03:17 - Judge: Greenwood, Richard
materials.
15:03:21 - Judge: Greenwood, Richard
The Crt addresses the debt.
15:03:32 - Defendant: Morgan, Phillip
Statement.
15:07:34 - Judge: Greenwood, Richard
The Crt addresses the debt.
15:11:13 - Judge: Greenwood, Richard
The Crt will send the debt to the Capp Program 2 + 6 = 8 yrs.
15:11:44 - Judge: Greenwood, Richard
The Crt will retain jurisdiction for 120 days. That the debt receive dule
15:12:19 - Judge: Greenwood, Richard
diagnosis. The Crt will not impose any fines, fees, and costs pending the
15:13:03 - Judge: Greenwood, Richard
return of the rider. The debt will receive credit for 158 days.
15:13:36 - Judge: Greenwood, Richard
The Crt advises the debt of his right to appeal.
15:14:01 - Pers. Attorney: Stewart, David
Statement regarding his appeal and if counsel could be appointed.
15:14:21 - Judge: Greenwood, Richard
The Crt addresses the debt.
15:14:47 - Judge: Greenwood, Richard
The debt is sworn and examined regarding his income.
15:15:57 - Judge: Greenwood, Richard
The Crt will direct the public defender. Mr. Stewart is not excused until
15:16:17 - Judge: Greenwood, Richard
the public defender is has appeared.
15:16:44 - Operator
Stop recording:

Mental Nihilism

Def. Name: Phillip Morgan Case No. CRFE10.5111
State: Shelley Armstrong Def Counsel: David Stewart

☒ Court recites history of case ☐ Standard Terms of Probation ☐ DNA Sample

☐ **Court announces sentence as follows: Sentenced to IDOC as follows**

Aggregate Sentence: 3 years = 2 fixed + 6 indeterminate

☐ Suspended --- ☒ 120 day Ret. Jurs. --- ☐ Supervised Probation: _____ yrs

___ Days county jail ☐ ___ suspend ☒ Credit 153 days ☐ Forthwith ☐ Sched. by PO

☐ Jail can served in _____ County no cost to Ada ☐ ___ Days discretionary jail time

☐ SATP ☐ Brain Building Basics ☐ ABC (cognitive self change) ☐ Standard court costs

☐ Fine _____ / _____ suspended ☐ Restitution \$ _____ ☐ PD \$250.00

☐ Enroll, meaningfully participate, complete any program specified by PO

☐ Has completed a rider and shall take part in all programs recommended

☐ Review for vocational rehabilitation and/or obtain GED or HSE

☐ If requests supervision be transferred, documents shall be admissible

☐ Enroll in subst. abuse treatment, include inpatient/No objection to religious based

☐ The Court has no obj. to the _____ program, which the def has chosen

☐ Obtain alcohol/sub abuse eval and follow recs. ☐ Has completed eval/follow recs

☐ Final opportunity at probation ☐ Register for Selective Service

☐ WITHHELD JDMT ☐ Advises another DUI/impose sentence

☐ **Driving privileges** suspended – _____ yrs absolute

☐ _____ Hours of community service ☐ Attend NA/AA meetings

☐ Obtain psychological/psychiatric treatment and sign waivers

☐ Establish budget with PO ☐ No checking account / credit cards/ No new indebtedness

☐ Advise future employers in writing that this is a _____ Offense

☐ Do not become intimately involved with anyone under 18 years

☐ Complete sex offender treatment including plethysmograph and polygraph examinations

☐ No intimate involvement with anyone who has female child under 18 residing in home

☐ No unsupervised contact with any female under the age of 18

☐ No contact with the victim ☐ NCO has been issued which means NO CONTACT.

☐ Register with the Sheriff's Office in county of residence

David A. Stewart
David Stewart Law
Attorney for Defendant
950 W Bannock Street, Suite 1100
Boise, Idaho 83702
Tel. (208) 850-5928
Fax. (208) 473-2960
E-mail: davids@davidastewartlaw.com
ISB# 7932

NOV 17 2010

J. DAVID NAVARRO, Clerk
By LANI BROXSON
DEPUTY

**IN THE FOURTH JUDICIAL DISTRICT COURT
ADA COUNTY, STATE OF IDAHO**

<p>STATE OF IDAHO, Plaintiff,</p> <p>Vs.</p> <p>PHILLIP J MORGAN, Defendant.</p>	<p>Case No. CR-FE-2010-5111</p> <p>NOTICE OF APPOINTMENT OF PUBLIC DEFENDER AND WITHDRAW OF PRIVATE COUNSEL</p>
--	--

COMES NOW, David A. Stewart, private counsel for Defendant, Phillip J. Morgan, and hereby gives notice that on November 16, 2010 before the Honorable Judge Greenwood, Defendant requested that the Public Defender be appointed to represent him in an appeal of the above entitled case. Upon examination of Mr. Morgan's indigent status, the Court found Defendant indigent and appointed the Public Defender to represent Mr. Morgan. Wherefore, private counsel, David A. Stewart, hereby withdraws as counsel for the Defendant.

RESPECTFULLY SUBMITTED this 17th day of November, 2010.



DAVID A. STEWART
Attorney at Law


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of November, 2010, I served a true and correct copy of the foregoing by the method indicated below and addressed to the following:

ADA COUNTY PUBLIC DEFENDER'S OFFICE
200 W Front Street
Boise, Idaho 83702

ADA COUNTY PROSECUTOR'S OFFICE
200 W Front Street
Boise, Idaho 83702

☐ US MAIL
☒ HAND DELIVERY
☐ FACSIMILE



DAVID A. STEWART

NOV 18 2010

J. DAVID NAVARRO, Clerk
By Shelley Armstrong
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP JAMES MORGAN,

DOB: [REDACTED]

SSN: [REDACTED]

Defendant.

Case No. CR-FE-10-0005111

JUDGMENT OF CONVICTION
AND ORDER RETAINING
JURISDICTION

On November 16, 2010, Shelley Armstrong, Deputy Prosecuting Attorney for the County of Ada, State of Idaho, and the defendant, Phillip James Morgan, with his attorney, David A. Stewart, appeared before this Court for sentencing. The defendant was duly informed of the information filed against him for the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL (TWO OR MORE WITHIN TEN YEARS), FELONY, I.C. §§ 18-8004, 8005(6), committed on or about March 12, 2010, and the defendant having been convicted of the crime by a jury thereto on September 30, 2009.

The defendant, and defendant's counsel, were then asked if they had any legal cause or reason to offer why judgment and sentence should not be pronounced against the defendant, and if the defendant, or defendant's counsel, wished to offer any evidence or to make a statement on behalf

my

of the defendant, or to present any information to the Court in mitigation of punishment; and the Court, having accepted such statements, and having found no legal cause or reason why judgment and sentence should not be pronounced against the defendant at this time; does render its judgment of conviction as follows, to-wit:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant is guilty of the crime of OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL (TWO OR MORE WITHIN TEN YEARS), FELONY, I.C. §§ 18-8004, 8005(6), and that he be sentenced pursuant to the Uniform Sentence Law of the State of Idaho, I.C. § 19-2513, to the custody of the State of Idaho Board of Correction for an aggregate term of eight (8) years: with the first two (2) years of the term to be FIXED, and with the remaining six (6) years of the term to be INDETERMINATE, with such sentence to commence immediately.

Pursuant to I.C. § 18-309, the defendant shall be given credit for the time already served upon the charge specified herein of one hundred fifty-eight (158) days.

The Court will retain jurisdiction for an indeterminate period of time not to exceed one hundred and twenty (120) days pursuant to I.C. § 19-2601(4).

The Court recommends the defendant be allowed to participate in the Correctional Alternative Placement Program Rider available through the Department of Correction and that he be diagnosed for mental health and substance abuse issues.

The Court will defer imposition of costs, fines, driver's license suspension, and other assessments, if any, and will take these up at the rider review hearing.

The defendant shall be remanded to the custody of the Sheriff of Ada County, to be delivered FORTHWITH by him into the custody of the State of Idaho Board of Correction.


IT IS FURTHER ORDERED that the Clerk deliver a certified copy of this Judgment to the Sheriff, which shall serve as the commitment of the defendant.

NOTICE OF RIGHT TO APPEAL

You, Phillip James Morgan, are hereby notified that you have the right to appeal this order to the Idaho Supreme Court. Any notice of appeal must be filed within forty-two (42) days from the entry of this judgment.

You are further notified that you have the right to be represented by an attorney in any appeal, that if you cannot afford to retain an attorney, one may be appointed at public expense. Further, if you are a needy person, the costs of the appeal may be paid for by the State of Idaho. If you have questions about your appeal rights, you should consult your present lawyer.

Dated this 16th day of November 2010.

A handwritten signature in black ink, appearing to read 'RDG', is written over a horizontal line.

RICHARD D. GREENWOOD
District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of November 2010, I mailed (served) a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR'S OFFICE
VIA EMAIL

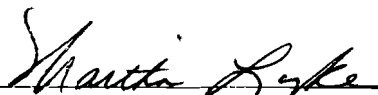
DAVID A. STEWART
DAVID STEWART LAW
950 W BANNOCK ST, STE 1100
BOISE, ID 83702

ADA COUNTY JAIL
VIA EMAIL

IDAHO DEPARTMENT OF CORRECTION
VIA EMAIL

PSI DEPARTMENT
VIA EMAIL

J. DAVID NAVARRO
Clerk of the District Court

By: 
Deputy Court Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT NOV 18 2010

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA J. DAVID NAVARRO, Clerk
By K. JOHNSON
DEPUTY

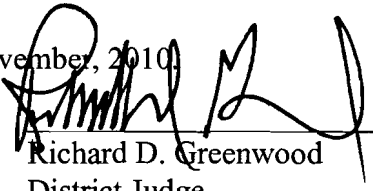
THE STATE OF IDAHO,)
)
Plaintiff,)
) Case No. CRFE10.5111
vs.)
) ORDER RE: PUBLIC DEFENDER
PHILLIP J. MORGAN,)
)
Defendant.)
_____)

TO: The Office of the Ada County Public Defender:

The above named defendant having filed an oral application, and having been previously represented by the Office of the Public Defender;

IT IS HEREBY ORDERED That you are appointed to represent the defendant in all matters pertaining to this action.

Dated this 18 day of November, 2010


Richard D. Greenwood
District Judge

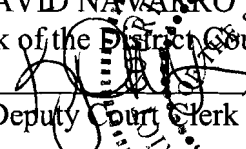
CERTIFICATE OF MAILING

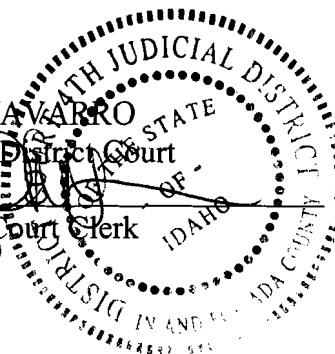
I hereby certify that on this 18th day of November, 2010, I mailed a true and correct copy of the within instrument to:

ADA COUNTY PUBLIC DEFENDER
INTERDEPARTMENTAL MAIL

ADA COUNTY PROSECUTING ATTORNEY
INTERDEPARTMENTAL MAIL

DAVID STEWART
ATTORNEY AT LAW
950 W BANNOCK STREET, STE. 1100
BOISE ID 83702
MAILED

J. DAVID NAVARRO
Clerk of the District Court
By: 
Deputy Court Clerk



ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____
A.M. 10 P.M. _____
FILED _____
NOV 23 2010
J. DAVID NAVI, F.O. CLERK
By SCARLETT RAJULIZ
DEPUTY

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,
Plaintiff

vs.

PHILLIP JAMES MORGAN,
Defendant.

Case No. CR-FE-2010-0005111

MOTION FOR BOND REDUCTION

COMES NOW, PHILLIP JAMES MORGAN, the above-named defendant, by and through counsel AUGUST H CAHILL, Ada County Public Defender's office, and moves this Court for its ORDER reducing bond in the above-entitled matter upon the grounds that the bond is so unreasonably high that the defendant, who is an indigent person without funds, cannot post such a bond, and for the reason that the defendant has thereby been effectively denied their right to bail.

DATED, Tuesday, November 23, 2010.



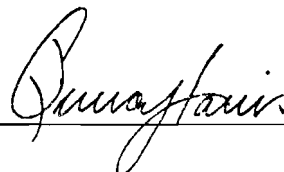
AUGUST H CAHILL
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Tuesday, November 23, 2010, I mailed a true and correct copy of the within instrument to:

SHELLEY W ARMSTRONG
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



MOTION FOR BOND REDUCTION

000133

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 West Front Street, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400
Facsimile: (208) 287-7409

NO. _____
FILED _____
A.M. _____ P.M. _____

NOV 23 2010

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff

vs.

PHILLIP JAMES MORGAN,

Defendant.

Case No. CR-FE-2010-0005111

REQUEST FOR DISCOVERY

TO: THE STATE OF IDAHO, Plaintiff, and to ADA COUNTY PROSECUTOR:

PLEASE TAKE NOTICE, that the undersigned, pursuant to ICR 16, requests discovery and photocopies of the following information, evidence, and materials:

- 1) All **unredacted** material or information within the prosecutor's possession or control, or which thereafter comes into his possession or control, which tends to negate the guilt of the accused or tends to reduce the punishment thereof. ICR 16(a).
- 2) Any **unredacted**, relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the state, the existence of which is known or is available to the prosecuting attorney by the exercise of due diligence; and also the substance of any relevant, oral statement made by the defendant whether before or after arrest to a peace officer, prosecuting attorney or the prosecuting attorney's agent; and the recorded testimony of the defendant before a grand jury which relates to the offense charged.
- 3) Any **unredacted**, written or recorded statements of a co-defendant; and the substance of any relevant oral statement made by a co-defendant whether before or after arrest in response to interrogation by any person known by the co-defendant to be a peace officer or agent of the prosecuting attorney.
- 4) Any prior criminal record of the defendant and co-defendant, if any.
- 5) All **unredacted** documents and tangible objects as defined by ICR 16(b)(4) in the possession or control of the prosecutor, which are material to the defense, intended for use by the prosecutor or obtained from or belonging to the defendant or co-defendant.

- 6) All reports of physical or mental examinations and of scientific tests or experiments within the possession, control, or knowledge of the prosecutor, the existence of which is known or is available to the prosecutor by the exercise of due diligence.
- 7) A written list of the names, addresses, records of prior felony convictions, and written or recorded statements of all persons having knowledge of facts of the case known to the prosecutor and his agents or any official involved in the investigatory process of the case.
- 8) A written summary or report of any testimony that the state intends to introduce pursuant to rules 702, 703, or 705 of the Idaho Rules of Evidence at trial or hearing; including the witness' opinions, the facts and data for those opinions, and the witness' qualifications.
- 9) All reports or memoranda made by police officers or investigators in connection with the investigation or prosecution of the case, including what are commonly referred to as "ticket notes."
- 10) Any writing or object that may be used to refresh the memory of all persons who may be called as witnesses, pursuant to IRE 612.
- 11) Any and all audio and/or video recordings made by law enforcement officials during the course of their investigation.
- 12) Any evidence, documents, or witnesses that the state discovers or could discover with due diligence after complying with this request.

The undersigned further requests written compliance within 14 days of service of the within instrument.

DATED, Tuesday, November 23, 2010.



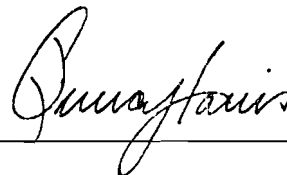
AUGUST H CAHILL
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, that on Tuesday, November 23, 2010, I mailed a true and correct copy of the within instrument to:

ADA COUNTY PROSECUTOR
Counsel for the State of Idaho

by placing said same in the Interdepartmental Mail.



NOV 24 2010

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front, Suite 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

J. DAVID NAVARRO, Clerk
By SCARLETT RAMIREZ
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO)	
)	
Plaintiff-Respondent,)	
)	
vs.	)	Criminal No. CR-FE-2010-0005111
)	
	)	NOTICE OF APPEAL
PHILLIP JAMES MORGAN,)	
)	
Defendant-Appellant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, GREG BOWER, ADA COUNTY
PROSECUTOR, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellant appeals against the above-named respondent to the Idaho Supreme Court from the final Decision and Order entered in the above-entitled action on the 18th day of November, 2010, the Honorable Richard D. Greenwood, District Judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Idaho Appellate Rule (I.A.R.) 11(c)(1-10).

3. A preliminary statement of the issues on appeal, which the appellant then intends to assert in the appeal, provided any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal, is/are:

NOTICE OF APPEAL, Page 1

(a) Did the district court err in failing to grant the appellant's Motion to Suppress? and

(b) Trial Evidentiary Issues.

4. There is a portion of the record that is sealed. That portion of the record that is sealed is the Pre-Sentence Investigation Report (PSI).

5. **Reporter's Transcript.** The appellant requests the preparation of the **entire reporter's standard transcript** as defined in I.A.R. 25(c). The appellant also requests the preparation of the additional portions of the reporter's transcript:

(a) Hearing held: Motion to Suppress June 15, 2010
Court Reporter: L. Anderson
Estimated pages: less than 100

(b) Jury Trial held: September 29 & 30, 2010
(to include the voir dire, opening statements, closing arguments, jury instruction conferences, reading of the jury instructions, any hearings regarding questions from the jury during deliberations, return of the verdict, and any polling of the jurors)

Court Reporter: D. Cromwell
Estimated pages: less than 300; and

(c) Sentencing Hearing held: November 16, 2010
Court Reporter: S. Gambee
Estimated pages: less than 50

6. **Clerk's Record.** The appellant requests the standard clerk's record pursuant to I.A.R. 28(b)(2). The appellant requests the following documents to be included in the clerk's record, in addition to those automatically included under I.A.R. 28(b)(2):

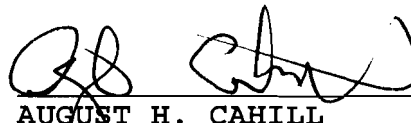
(a) All items, including any affidavits, objections, responses, briefs or memorandums, offered in support of or in opposition to the Motion to Suppress and all evidentiary issues at the Jury Trial.

(b) Any exhibits, including but not limited to letters or victim impact statements, addendums to the PSI or other items offered at sentencing hearing.

7. I certify:

- (a) That a copy of this Notice of Appeal has been served on the Court Reporters, L. Anderson, D. Cromwell, and S. Gambee;
- (b) That the appellant is exempt from paying the estimated fee for the preparation of the record because the appellant is indigent. (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 24(e));
- (c) That there is no appellate filing fee since this is an appeal in a criminal case (Idaho Code §§ 31-3220, 31-3220A, I.A.R. 23(a)(8));
- (d) That Ada County will be responsible for paying for the reporter's transcript, as the client is indigent, I.C. §§ 31-3220, 31-3220A, I.A.R. 24(e); and
- (e) That service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 23rd day of November, 2010.



AUGUST H. CAHILL
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY, That on the 23rd day of November, 2010, I
mailed true and correct copies of the foregoing, NOTICE OF APPEAL
to:

KENNETH K. JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
P.O. BOX 83720
BOISE, ID 83720-0010

L. ANDERSON, D. CROMWELL, AND S. GAMBEE, HONORABLE JUDGE
GREENWOOD'S COURT REPORTER


Stephanie Martinez

NOV 29 2010

ADA COUNTY PUBLIC DEFENDER
Attorneys for Defendant
200 W. Front St., Ste. 1107
Boise, Idaho 83702
Telephone: (208) 287-7400

RECEIVED
NOV 29 2010
ADA COUNTY

J. DAVID NAVARRO, Clerk
By K. JOHNSON
DEPUTY

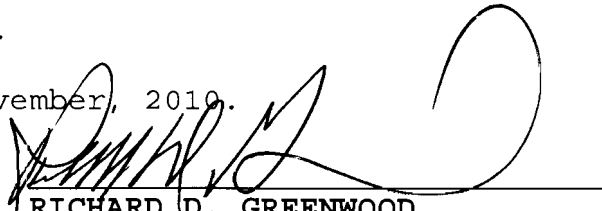
IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO)	
)	
Plaintiff-Respondent,	)	Criminal No. CR-FE-2010-0005111
)	
vs.)	
)	
PHILLIP JAMES MORGAN,	)	ORDER APPOINTING STATE
	)	APPELLATE PUBLIC DEFENDER
Defendant-Appellant.	)	ON DIRECT APPEAL
)	

The above-named Defendant, PHILLIP JAMES MORGAN, being indigent and having heretofore been represented by the Ada County Public Defender's Office in the District Court, and said Defendant having elected to pursue a direct appeal in the above-entitled matter;

IT IS HEREBY ORDERED, AND THIS DOES ORDER, That the Idaho State Appellate Public Defender is appointed to represent the above named Defendant, PHILLIP JAMES MORGAN, in all matters pertaining to the direct appeal.

DATED This 29 day of November, 2010.


RICHARD D. GREENWOOD
District Judge

ORDER APPOINTING STATE APPELLATE
PUBLIC DEFENDER ON DIRECT APPEAL

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720
(208) 334-2616

NO. _____ FILED
A.M. 8:00 P.M. _____

MAR 16 2011

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

IN THE SUPREME COURT OF THE STATE OF IDAHO

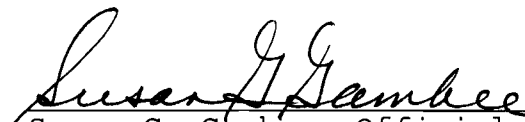
- - - - - x Docket No. 38305-2010
STATE OF IDAHO, :
Plaintiff-Respondent, :
vs. :
PHILLIP JAMES MORGAN, :
Defendant-Appellant. :
- - - - - x

NOTICE OF TRANSCRIPT OF 42 PAGES LODGED

Appealed from the District Court of the
Fourth Judicial District of the State of
Idaho, in and for the County of Ada,
Richard D. Greenwood, District Court Judge.

This transcript contains hearing held on:
November 16, 2010

DATE: December 6, 2010



Susan G. Gambee, Official Court Reporter
Official Court Reporter,
Judge Deborah Bail
Ada County Courthouse
Idaho Certified Shorthand Reporter No. 18
Registered Merit Reporter

To: Clerk of the Court
Idaho Supreme Court
Boise, Idaho 83720

NO. _____
A.M. 8:00 FILED P.M. _____

MAR 16 2011

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

Docket No. 38305-2010

(Res) STATE OF IDAHO

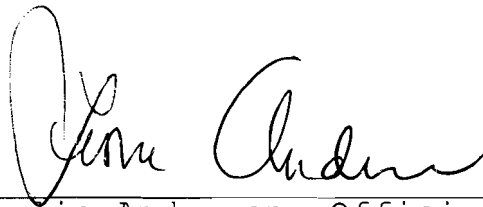
vs.

(App) PHILLIP JAMES MORGAN

NOTICE OF REPORTER'S TRANSCRIPT LODGED:

Motion to Suppress Hearing held 6/15/10

Notice is hereby given that on December 16, 2010,
I lodged a transcript of 36 pages in length for the
above-referenced appeal with the District Court Clerk of
the County of Ada in the Fourth Judicial District.



Leslie Anderson, Official Reporter
Ada County Courthouse
200 West Front Street, Rm. 5117
Boise, Idaho 83702
(208) 287-7586

NO. _____
A.M. 8:00 P.M. FILED

MAR 16 2011

CHRISTOPHER D. RICH, Clerk
By BRADLEY J. THIES
DEPUTY

Stephen W. Kenyon
Clerk of Supreme Court
451 W State Street
Boise, Idaho 83720

In re: State of Idaho v. Phillip J. Morgan, Docket No. 38305

Notice is hereby given that on Tuesday, March 1, 2011, I lodged a transcript of 411 pages in length for the above-referenced appeal with the district court clerk of Ada County in the Fourth Judicial District.

The following files were lodged:

Covers, Proceeding 9/29/2010 and Proceeding 9/30/2010

David Cromwell
Tucker & Associates

cc: kloertscher@idcourts.net
PDF format of completed files emailed to Supreme Court

000143

BT

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

PHILLIP JAMES MORGAN,

Defendant-Appellant.

Supreme Court Case No. 38305

CERTIFICATE OF EXHIBITS

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

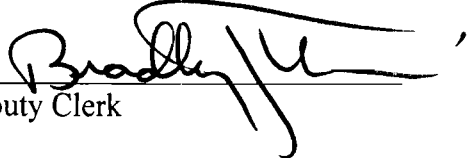
That the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court on Appeal.

I FURTHER CERTIFY, that the following documents will be submitted as CONFIDENTIAL EXHIBITS to the Record:

1. Pre-Sentence Investigation Report.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 3rd day of March, 2011.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE OF EXHIBITS

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

CT REPTR: LESLIE ANDERSON

$$\begin{pmatrix}) \\) \\) \\) \\) \\) \\) \\) \\) \end{pmatrix}$$

EXHIBIT LIST

David Stewart

1	Diagram of streets	06/15/2010	Admitted
---	--------------------	------------	----------

A	Photograph	06/15/2010	Admitted
B	Photograph	06/15/2010	Admitted

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BARRY WOOD/JANET ELLIS
DISTRICT JUDGE DEPUTY CLERK

September 29-30, 2010

STATE OF IDAHO,

Plaintiff,

vs.

PHILLIP MORGAN,

Defendant.

Case No. CRFE-10-0005111

EXHIBIT LIST FOR JURY TRIAL

APPEARANCES:

SHELLEY ARMSTRONG
ADA COUNTY PROSECUTING ATTORNEY

Counsel for State of Idaho

DAVID STEWART
STEWART LAW OFFICES

Counsel for Defendant

BY	NO.	DESCRIPTION	STATUS
ST	1	ARIEL MAP OF STATE STREET	ADMITTED
ST	2	CLOSE UP ARIEL OF TAFT STREET	ADMITTED
ST	3	INTOXILIZER TICKET	ADMITTED
ST	6	EVIDENCE SUBMITTAL FORM	NOT OFFERED
ST	7	FIELD SOBRIETY FORM for recollection only	NOT OFFERED
ST	8	Officer Stace's report for recollection of memory only	NOT OFFERED
ST	9	JOC COUNTY OF BENTON WASHINGTON D6-8866	ADMITTED
ST	10	JOC FAYETTEVILLE DISTRICT COURT DWI-09-804	ADMITTED
DEF	A	PHOTO Area of Stop	ADMITTED
DEF	B	PHOTO Taft and Silver (Area of Stop)	ADMITTED

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

PHILLIP JAMES MORGAN,

Defendant-Appellant.

Supreme Court Case No. 38305

CERTIFICATE OF SERVICE

I, CHRISTOPHER D. RICH, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

STATE APPELLATE PUBLIC DEFENDER

ATTORNEY FOR APPELLANT

BOISE, IDAHO

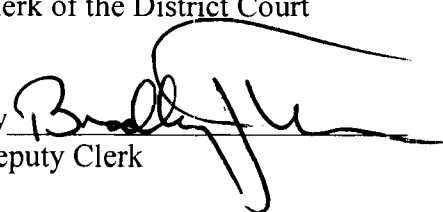
LAWRENCE G. WASDEN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: MAR 16 2011

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE OF SERVICE

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO,

Plaintiff-Respondent,

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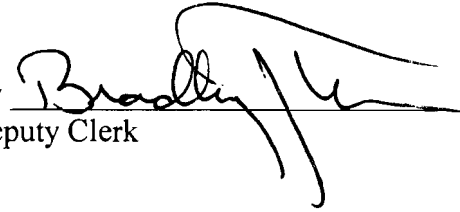
Supreme Court Case No. 38305

CERTIFICATE TO RECORD

I, CHRISTOPHER D. RICH, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 24th day of November, 2010.

CHRISTOPHER D. RICH
Clerk of the District Court

By 
Deputy Clerk

CERTIFICATE TO RECORD

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